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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 788

SOUTHERN RAILWAY COMPANY AND SOUTHERN RAILWAY, CAROLINA DIVISION, PETITIONERS,

vs.

MARY O. YOUNGBLOOD, AS ADMINISTRATRIX OF THE ESTATE OF CLEVELAND J. YOUNGBLOOD, DECEASED

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

PETITION FOR CERTIORARI FILED MARCH 11, 1932

CERTIORARI GRANTED APRIL 18, 1932

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( )

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IN SUPREME COURT OF SOUTH CAROLINA

Statement of Case

This action was commenced by the plaintiff in May, 1924, to recover $100,000.00 damages for the alleged wrongful death of her intestate, Cleveland J. Youngblood, while in the employ of the defendants as a conductor, as the result of injuries received in a head-on collision between two trains of the defendants at or near Stilton, in Orangeburg County, South Carolina, on January 3, 1924, the said intestate being employed and the defendants being engaged at said time in interstate commerce.

The case was tried at the September, 1930, term of the Court of Common Pleas of Barnwell County before his Honor, Judge T. S. Sease, and a jury. At the conclusion of the introduction of all the evidence the defendants made a motion for the direction of a verdict in their favor, which motion was overruled and the case submitted to the jury, who returned a verdict in favor of the plaintiff for $12,500.00. A motion for a new trial was made and refused.

[fol. 4] In Court of Common Pleas of Barnwell County

Mary O. Youngblood, as Admr.,

vs.

Southern Railway Co.

Complaint

Complaint alleges:

1. That the Plaintiff is the duly appointed and qualified administratrix of the estate of Cleveland J. Youngblood, who came to a wrongful death, and who died intestate.

2. That at the times hereinafter mentioned the Defendant Southern Railway Company was, and still is, a com-

mon carrier railroad corporation, duly authorized by law, and having capacity to sue and be sued.

3. That at the times hereinafter mentioned the defendant Southern Railway—Carolina Division was and still is, a common carrier railroad corporation, duly organized and established under the laws of the State of South Carolina, having capacity to sue and be sued.

4. That at said times the Defendants owned and operated lines of railroad through the Counties of Orangeburg and Barnwell, in the State of South Carolina, together with their cars, locomotive, tracks, station houses, and all other usual and useful appliances and appurtenances.

5. That the Defendants at said times were engaged as common carrier railroads in interstate commerce.

6. That on the third day of January, 1924, the intestate Cleveland J. Youngblood was employed by the Defendants as a train conductor.

7. That on the third day of January, 1924, while employed by the Defendants as a train conductor and while engaged in the discharge of his duties as such in the transaction of intrastate commerce, at or near Stilton, in Orangeburg County, in the State of South Carolina, owing [fol. 5] to the joint, several and concurrent wilfulness, wantonness, recklessness, negligence and carelessness of the Defendants in the several particulars hereinafter stated, the intestate Cleveland J. Youngblood was mortally wounded in and upon his body, having been caught in a "head-on" collision between the locomotive drawing his train and another locomitive moving in the opposite direction, both being owned and operated by the Defendants, so that he died shortly afterwards.

8. That such injuries, and consequent death, of the intestate were occasioned by the following joint, several and concurrent acts of wilfulness, wantonness, recklessness, carelessness and negligence of the Defendants, to-wit: in not providing a safe and suitable place wherein and whereon the intestate employe could perform his work; in not providing safe and suitable appliances and instrumentalities with which the intestate employe could safely perform his duties; in failing to furnish safe and com-

petent agents, officers and employes to direct the movements of the two trains; in furnishing unsafe and incompetent agents, officers and employes to direct the movements of the two trains; in failing to give proper orders for the movement of the two trains which were in collision; in giving wrong and improper orders for the movement of the two trains which were in collision; in not giving proper signals for the movements of the train on which the intestate employe was working; in giving wrong and improper signals for the movement of the train on which the intestate employe was working; and owing to the negligence of the agents, officers and employes in directing the movements of the two trains in collision.

9. That the estate of the intestate employe has sustained damages to the amount of one hundred thouand dollars on [fol. 6] account of his wrongful death.

10. That this action is brought for the benefit of the plaintiff, who is the widow of the intestate, and for the six infant children of the intestate, to-wit: Grace E. Youngblood, Claude L. Youngblood, Cleveland J. Youngblood, the younger, Carl L. Youngblood, Sarah E. Youngblood, and James W. Youngblood, aged fourteen, eleven, nine, seven, four and one years respectively.

Wherefore the Plaintiff demands judgment against the Defendants for one hundred thousand dollars with costs.

Wolfe & Berry, W. Claude Martin, W. M. Warren,
Attorneys for the Plaintiff.

IN COURT OF COMMON PLEAS OF BARNWELL COUNTY

ANSWER

The defendant above named, by their attorneys, make answer to the complaint herein as follows:

For a First Defense

Deny each and every allegation in the said complaint contained, except those matters hereinafter specifically admitted.

For a Second Defense

1. As to paragraph one of said complaint, the defendant have not sufficient knowledge or information upon which to form a belief, and therefore deny the same and demand strict proof thereof.

2. The defendants admit paragraphs two, three, and four of said complaint, and so much of paragraph five as alleges that the defendants at the time were engaged as common [fol. 7] carrier railroads, but deny that they were engaged in intrastate comemrce, but on the contrary aver in regard to said fifth paragraph of the complaint that the plaintiff's intestate and the defendants, at the time referred to in the complaint, were engaged in interstate commerce, and rights between the parties hereto are controlled by the Act of Congress passed 1908, amended April 5th, 1910, 35 Stat. at L. 69, known as the Federal Employers' Liability Act, the terms and application of which are herein especially invoked.

3. As to paragraphs six and seven of said complaint, these defendants admit that plaintiff's intestate, Cleveland J. Youngblood, was employed by them as a conductor, and allege further that, while acting as such and engaged in interstate commerce with the defendants, he was killed in a head-on collision at or near Orangeburg, South Carolina, on the 3rd day of January, 1924.

For a Third Defense

These defendants aver that the injuries which caused the death of plaintiff's intestate on the occasion referred to in the complaint, were caused in whole or in part, or were contributed to as a proximate cause thereof, by the negligence and wilfulness of plaintiff's intestate in violating the orders of the defendants, when he knew or should have known at the time that his train was to remain on the side-track in the city of Orangeburg, South Carolina, in order for an eastbound train to pass; in disregarding said order and proceeding on the main line of the defendants through and past the city of Orangeburg and running into said eastbound train, causing a head-on collision, and in otherwise failing to exercise that care, caution and prudence which

an ordinarily careful, cautious and prudent person would [fol. 8] have exercised under similar circumstances, without which negligent, careless and wilful conduct on the part of plaintiff's intestate the injuries which caused his death would not have occurred.

For a Fourth Defense

The defendants allege that the plaintiff's intestate herein, at the time referred to in the complaint, was fully apprised and aware of all dangers, both usual and unusual, incident to his employment, and was fully aware of the physical conditions surrounding the accident and the place of employment and the method of work, and fully appreciated the dangers of the same, and freely and voluntarily acquiesced in and assumed the risks of such employment.

Wherefore the defendants pray that the complaint herein be dismissed.

Harley & Blatt, Defendants' Attorneys.

In Court of Common Pleas of Barnwell County.

Stipulation as to Facts, etc.

It is stipulated by and between counsel representing all parties in this action:

1. That the intestate Cleveland J. Youngblood at the time of receiving the injuries from which he subsequently died was engaged in an act of interstate commerce.

2. That the intestate Cleveland J. Youngblood and the defendants, at the time the former received the injuries from which he subsequently died, were both engaged in an act of interstate commerce.

3. That this action is to be tried under the Federal Employers' Liability Act of Congress.

[fol. 9] IN COURT OF COMMON PLEAS OF BARNWELL COUNTY

Statement of Evidence

TESTIMONY ON BEHALF OF THE PLAINTIFF

By agreement of counsel, the record from the Probate Court of Orangeburg County, being package number 122, and apartment number 195, was introduced in evidence showing the appointment of Mrs. Mary O. Youngblood as Administrator of the estate of C. J. Youngblood, deceased.

W. H. DUKES, a witness for the plaintiff, sworn, testified as follows:

Direct examination.

By Mr. Wolfe:

I reside in Orangeburg, where I am engaged in the undertaking business, and have been in that business thirty-two years. I knew C. J. Youngblood and L. K. Dantzler. I last saw them at my undertaking shop in Orangeburg when I shipped them off. I got the two bodies from the Orangeburg Hospital on the 3rd day of January, 1924, and prepared them for burial. They were both white men and about middle age. Their bodies were well nourished, especially Mr. Youngblood. He was robust and of a very fine physique. They were killed in a railroad wreck near Stilton, about two and one-half miles from Orangeburg. I saw the wreck, and I knew that Mr. Youngblood and Mr. Dantzler were working for the railroad. Mr. Dantzler was an engineer and Mr. Youngblood was a conductor. There was a very heavy fog on the morning of the wreck. I cannot recall that I ever observed it as foggy as that before in the day time. I got Mr. Youngblood's body from the Hospital about four o'clock in the afternoon, and Mr. Dantzler's body about eight that night. I did the embalming myself, and sent Mr. Youngblood's body in the hearse to Branchville, and sent Mr. Dantzler's body to Ninety-Six. [fol. 10] I do not know where they buried Mr. Youngblood. Mr. Youngblood's body was scalded practically all over. The skin would slip off all over, and we had to use a mild

fluid to keep from burning his body and discoloring it. The wreck occurred about eight or nine o'clock in the morning.

Cross-examination.

By Mr. Harley:

In addition to preparing the bodies of Mr. Dantzler and Mr. Youngblood, I also prepared the bodies of two other white men, Mr. Ulrich and Mr. Brown. There was also a colored man named Forest, but I turned him over to the colored undertaker. Those were killed in the same wreck, but on different trains. Mr. Brown and Mr. Ulrich and the fireman were on the through freight coming down, and Mr. Youngblood and Mr. Dantzler were on the shifting engine coming up, that is, going towards Columbia. I prepared these bodies at the request of Mr. W. S. Cooper, agent of the Southern Railway Company at the City of Orangeburg, and my bills for service were paid by the Southern Railway Company.

Redirect examination.

By Mr. Wolfe:

I know Mr. Joe Witherspoon. He was the fireman on Mr. Youngblood and Mr. Dantzler's train. He was in the Hospital at Orangeburg in pretty bad condition. They thought he would die for a long time.

O. B. Rosenger, a witness for the plaintiff, sworn, testified as follows:

Direct examination.

By Mr. Wolfe:

I am a photographer at Orangeburg, where I have resided for thirty-eight years. I recall going to a wreck on the Southern Railway near Stilton in Orangeburg County on January 3rd, 1924. Stilton is about two and one-half or [fol. 11] three miles from Orangeburg. I took some pictures of that wreck. These are the views that I made.

Those are double views. I made only two views. Two of the pictures represent each view.

(Two pictures offered in evidence on behalf of plaintiff and marked by the stenographer as Exhibits Nos. two and three.)

Those pictures were made right after the wreck occurred and before it was cleared away. These four views mounted on a card board represent the passenger depot of the Southern Railway Company at Orangeburg. These pictures show the passenger depot and sheds surrounding it, the semaphore board, and the walks around there.

(Card board pictures offered in evidence on behalf of the plaintiff, and marked by the stenographer as Exhibit No. four.)

Cross-examination.

By Mr. Harley:

The street east of the passenger depot here was called Railroad Avenue, but I think it has been re-named in the last year or two and is now called South Boulevard. This wreck was two and one-half or three miles west of Orangeburg towards Columbia. Orangeburg is about twenty miles by railroad from Branchville, and about nine miles from Rowesville. Rowesville is about eleven miles from Branchville. Orangeburg is about eleven or twelve miles from St. Matthews, and St. Matthews is between Orangeburg and Columbia.

Mrs. Mary O. Youngblood, the plaintiff, sworn, testified as follows:

Direct examination.

By Mr. Wolfe:

Cleveland J. Youngblood, who is dead, was my husband. He was raised at Elko, in Barnwell County. He was killed on January 3rd, 1924, in this wreck which occurred on the [fol. 12] Southern Railway line near the city of Orangeburg. His body was sent to Branchville, where we lived

at the time. I carried the body the next day and buried it at Elko, in this County. Mr. Youngblood was thirty-nine years old when he died, and we had been married sixteen years. At the time of his death he was employed by the Southern Railroad as Conductor, and had been working for them sometime. His compensation was about twenty-three or twenty-four hundred dollars the year before his death. I am administratrix of his estate. We had six children, all of whom are now living. Grace was fourteen years old, Claude, eleven years, Cleveland, nine years, Carl, six years, Sarah, four years, and James was ten months. Mr. Youngblood supported myself and the children. My age is forty years. At the time of the accident Mr. Youngblood's work at Branchville was Conductor of the switch engine there. They have right extensive yards at Branchville. That is where the trains turn off from Augusta going to Columbia, and vice-versa. Mr. Youngblood worked at night, and was on duty the night before he was killed. He came home about 5:30 o'clock in the morning, and about eight o'clock he was called back in the service. He was not running on the regular line. He went back to work when he was called at about eight o'clock in the morning. Shortly after he was injured, some friends notified me, and I went to the Orangeburg Hospital to see him. I got there about two-thirty in the afternoon and saw him. He lived about three quarters of an hour after I got there. There were two others in the same room, Captain Ulrich and Mr. Witherspoon. Mr. Dukes prepared Mr. Youngblood's body for burial. Mr. Youngblood was always in good health, and he made regular time. He sometimes made over-time, [fol. 13] but not very much. They paid him for that too. Mr. Youngblood was very tall, over six feet, and weighed about two hundred and twenty-five pounds. He had been working for the Southern Railway for about twenty years, I think. He had worked for them since we were married, and before we were married, and had risen to the position of Conductor. His health was good. That picture is a good likeness of him.

(Picture of Cleveland J. Youngblood offered in evidence by the plaintiff, and marked by the stenographer as Exhibit No. Four.)

My husband was scalded to death. The accident happened about nine o'clock in the morning of January 3, 1924,

and he died that afternoon about three o'clock. The six children and myself depended on Mr. Youngblood for support.

H. A. PEARCE, a witness for the plaintiff, sworn, testified as follows:

Direct examination.

By Mr. Wolfe:

I am thirty years of age, and my business is train dispatcher for the Southern Railroad. On January 3, 1924, I was employed at Charleston. I went on duty at twelve o'clock midnight for an eight hour period. I was relieved about 7:55 A. M. by R. L. Rogers, who is also one of the dispatchers. We both perform our duties at Charleston, South Carolina, in the service of the Southern Railway. Our office, where the records are kept, is at the corner of King and Ann Streets in Charleston. Mr. Rogers relieved me at 7:55 on the morning of January 3, 1924. I think our train order book will give a better copy of that order. I would prefer to read from the train order book.

Q. Is that the train order book (indicating to the witness)?

A. Yes, sir.

Q. Is that the order?

A. Yes, sir.

[fol. 14] Q. Read it please?

A. Train order number eighteen to Orangeburg—Extra 723, East, and operator—Branchville, Engine number 483—Extra 723 East gets this order and meets Extra 483 West at Orangeburg. Engine 483 run extra, Branchville to Andrews. It is signed by C. W. Fox, Chief Dispatcher.

I don't remember whether Mr. Fox, the Chief Dispatcher, was there when that order was sent or not. I could handle it if he was not there. Mr. Rogers and I could issue orders in his name and over his signature. Mr. Fox is dead now. That order was sent at 7:58 A. M. And the signature is C. W. F., that is C. W. Fox. The R. indicates that Mr. Rogers sent it. The word "Jones" on there means the operator at Orangeburg. It indicates that he received the order at

8:01 A. M. Von Lehe was the operator at Branchville. It indicates that the order was delivered to Mr. Youngblood at 8:32 A. M. I did not send that order. Mr. Rogers relieved me and sent it. I loitered a little while in the office after Mr. Rogers relieved me and I heard him send the order. All train orders are numbered serially, commencing at midnight. The first order sent after midnight is numbered number one, and we proceed until the next midnight. This order sent at 7:58 A. M., the order in question, was order number eighteen, and was the eighteenth order sent after midnight of January 3rd. The railroad name for that order is a 31 order. We have another class of train orders known as a 19 order. A form 31 order has to be signed for. A 19 order does not have to be signed for by the train crew. That is the distinction between them. The order in question was a 31 order. A 19 order is just handed up on a hoop to one member of the train crew and he catches it on his arm. A 31 order is different in delivery; it has to be signed for by the operators along the line in-
[fol. 15] terested as well as the engineer and conductor of the trains affected.

Q. And all important orders are sent as a 31 order?

A. Yes, sir, anything restricting the rights of the train must be signed for, and they are designated as 31 orders.

Q. A 31 order is sent to whom?

A. Who it is addressed to?

Q. Now—I mean who is it sent to?

A. To whoever is to carry it out.

Q. It is sent first to who?

A. To the operator for the train affected by the movement.

Q. What operator?

A. The one at the station where you want the train crew to get the order.

Q. You sent this one to Branchville?

A. Yes, sir, it was sent there.

Q. Mr. Von Lehe was the operator?

A. Yes, sir.

Q. He was to deliver it to Mr. Dantzler and Capt. Youngblood then?

A. To the Conductor, Mr. Youngblood.

Q. The point of passing there was designated as Orangeburg?

A. Yes, sir.

Q. Would you send it to the Orangeburg operator?

A. If it was practical.

Q. What do you mean—if the office was open?

A. If it was practical for him to get it.

Q. Mr. Jones was on duty at Orangeburg?

A. Yes, sir.

Q. Orangeburg is a twenty-four hour office?

A. Yes, sir.

Q. You keep it open all day and all night?

A. Yes, sir, day and night.

Q. How many operators work at Charleston in the office?

A. Three.

[fol. 16] Q. You work them how long?

A. Eight hours each.

There is a distinction between the operator and the dispatcher. The dispatcher sends orders out for the movement of the trains affected, and the operators receive them at the various stations and deliver them. Branchville is a twenty-four hour office; we have three operators there. Mr. Von Lehe was on duty at Branchville. Then Orangeburg, going towards Columbia, is the next twenty-four hour office. One goes on at midnight, one at eight A. M., and the next one at four P. M. Mr. Jones was on duty at Orangeburg when this message was sent. He went off duty at eight o'clock, and would be succeeded at eight A. M. by operator Tyson. 31 orders are addressed to those who are to execute them. Each telegraph station along the line has a call signal. The call signal for Orangeburg is J. D. That is what is on this order, meaning Orangeburg. When you call J. D. it is known that the Orangeburg operator is being addressed. The signal or call for Branchville is B. V. When Mr. Rogers sent this order number eighteen, he first called J. D., which means Orangeburg, and then the dispatcher would also call B. V., which is Branchville. After you leave Orangeburg, the next twenty-four hour station is at Kingville. St. Matthews is about twelve and a half miles from Orangeburg towards Columbia, and it is a day office. The operator goes on at eight in the morning, and

there is no night operator there. When I was on duty, no operator was on duty at St. Matthews then. He went on duty when I went off. Kingville is a twenty-four hour office, and is fourteen miles from St. Matthews, and about twenty-seven miles from Orangeburg.

Q. When an order like this is sent—the first thing you [fol. 17] call is J. D.?

A. Yes, sir.

Q. And that is Orangeburg?

A. Correct, yes, sir.

Q. When he announces that he is ready you send the message?

A. Yes, sir.

Q. You do what then?

A. Get the other man at Branchville and proceed to send the order to him.

Q. This is addressed Extra 723 East and operator?

A. Yes, sir, at Orangeburg.

Q. That is sent to Orangeburg operator?

A. Yes, sir.

Q. Then you have B. V., engine 483?

A. Yes, sir.

Q. What is the mening of the words "and Operator" on there in railroad terms?

A. I don't understand you.

Q. When the words "and operator" are added—it means that five copies must be made, doesn't it?

A. Yes, sir.

Q. Five copies of that order must be made?

A. Yes.

Q. That is to say the operator at Orangeburg, whose address is J. D.—when you call him—you call J. D. at Orangeburg?

A. You call J. D.

Q. Which you have stated is the call for Orangeburg?

A. Yes, sir.

Q. He has a form book?

A. Yes, sir.

Q. Then he puts in the form all copies and gets ready?

A. They have them all prepared in three copies and five copies and ready to take them.

Q. When the operator is addressed at Orangeburg as J. D. "and operator," he should get five copies or forms?

A. Yes, sir.

Q. And he should make them?

A. Yes, sir.

Q. In five copies?

A. Yes, sir.

Q. He would keep one in his office for his record?

A. Yes, sir.

[fol. 18] Q. The first train crew that came in he would give the crew a copy of the order?

A. The first train affected, yes, sir.

Q. The operator should give the engineer and conductor each a copy of the order?

A. Yes, sir.

Q. I am referring now to a 31 order?

A. Yes, sir, I understand.

Q. When such an order as that is sent, and the Orangeburg operator takes the five copies, as he should do—when the first train affected comes in he should give the conductor and engineer a copy?

A. Yes, sir, the conductor would be required to come in and sign for it and give a copy to the engineer.

Q. In case of a 31 order, the first train affected—when that rolls in—then the conductor comes in and signs for it, or he should do so?

A. If it is addressed to him.

Q. He gets a copy for himself as he signs for it?

A. Yes, sir.

Q. And he gets another copy for his engineer?

A. Yes, sir.

Q. That is the proper way to do it?

A. Yes, sir.

Q. When you don't use the words "and operator" in the address, what number of copies do you make?

A. If it is addressed to two trains it requires five copies of the order.

Q. This was addressed to two trains?

A. One train at Orangeburg and one at Branchville.

Q. It was addressed to two trains then?

A. Yes, sir.

Q. That is the address on here (indicating to witness)?

A. Yes, sir.

Q. The operator at Orangeburg, under that message, should have made five copies of it?

A. Yes, sir.

[fol. 19] Q. And if Extra 483 came first, Mr. Youngblood, who happened to be the Conductor here, should have gone in and signed for it?

A. He should not have signed for it because he was not the train it was addressed to, but a copy of the order should have been delivered to him.

Q. At Orangeburg?

A. Yes, sir.

Q. By whom?

A. By the operator.

Q. Where should it have been given to him?

A. At the telegraph office.

Q. He should have been given two copies?

A. Yes, sir.

Q. One for himself and one for his engineer?

A. Yes, sir.

Q. The conductor would have to stop the train and come in and get it?

A. Yes, sir.

Q. That is the only way to get him in there?

A. Yes, sir, of course.

Q. That is to stop the train?

A. Yes, sir.

There is such a thing as a three copy order. That is when it is addressed to only one train. The operator at the station keeps one copy for his files, and gives the other two to the conductor or engineer as their copies. This order was sent out specifically as a five copy order, and when the words "and operators" are included in an order like this, its meaning is a five copy order and that five copies should be made of that order. On that particular morning before I went off duty there was a disabled freight train at Fort Motte between Orangeburg and Columbia. The number of that freight train was Extra 683 West. It was moving towards Columbia to the Andrews Yards there. We were notified that that engine was disabled. There was another extra train out known as extra 723, which made three extra trains moving in that vicinity at

[fol. 20] approximately the same time, extra 723, extra 683, and extra 483. Extra 683, which had been disabled, was moving westward and going towards Columbia. When we were notified of this extra 683 being disabled at Fort Motte, we ordered an engine to relieve him. The dispatcher on duty at that time had authority as to the movement of trains. The train dispatcher issues the orders, and the operators take the orders from him. When we were notified that extra 683 had become disabled and had to be relieved at Fort Motte, we ordered Mr. Youngblood as conductor and Mr. Dantzler as engineer to go from Branchville. Those gentlemen belonged to a regular switch crew at Branchville, and they worked at night from nine P. M. until five A. M. They were notified about 7:30 on the morning of January, 3rd that the train was disabled at Fort Motte. This order was for the purpose of calling out Mr. Youngblood and Mr. Dantzler at Branchville to take an engine and go to Fort Motte to the disabled train and take it on to Columbia, and the order gave them the right to run train for that purpose. Extra trains are given the same number that the engine bears. Engine number 483 would be extra 483. The number of the extra train would be created according to the engine number. The one at Fort Motte was designated as extra 683, and the one coming this way,—the engine being number 723, was designated as extra 723. Extra 483 consisted of only the engine and the tender, and had no caboose. It was moving west by Orangeburg to Andrews Yard and through Fort Motte. Andrews is the yard at Columbia. Extra 483 was to take engine 683 and his train in to Andrews yard at Columbia. Conductor Youngblood with his train was to start at Branchville and proceed to Fort Motte and carry the disabled train to Andrews yard about one mile east of Columbia.

[fol. 21] Q. Now, number 723, or extra 723 was moving eastward?

A. Yes, sir.

Q. And there was another train moving through Orangeburg just immediately before either one of them would get there?

A. Yes, sir.

Q. That was the passenger train?

A. Yes, sir.

Q. That is number twelve, I believe?

A. Number twelve, yes, sir.

Q. The passenger train was moving in the opposite direction from extra 483?

A. Yes, sir.

Q. That left Columbia at what hour?

A. 7:10 A. M.

Q. That is the schedule time?

A. Yes, sir, it left there 7:10 A. M.

Q. And it is due in Orangeburg when?

A. At 9:01 I think.

Q. There were three of these extra trains?

A. Yes, sir.

Q. 723 coming east?

A. Yes, sir, that was one.

Q. And 683, the disabled train at Fort Motte, was one?

A. Yes, sir.

Q. And 483, starting at Branchville to relieve the disabled train at Fort Motte?

A. Yes, sir.

Q. Extra 483 was Mr. Youngblood's train?

A. Yes, sir, he was conductor of that.

Q. Extra 723, east, and extra 483, west were the two that were in collision?

A. Yes, sir.

Q. Both were extra trains?

A. They were.

Q. And they were moving opposite directions?

A. Yes, sir.

Q. And they were the two trains in which Mr. Youngblood and the others were killed?

A. Yes, sir.

Q. Now, there are three ways to move trains,—isn't that true, Mr. Pearce?

A. Yes, sir.

[fol. 22] Q. Schedule, time table and order?

A. Yes, sir.

Q. An extra train is always moved by train order.

A. That is correct.

Q. And moved that way alone?

A. Yes.

Q. Do you know about where extra 723 was when Mr. Rogers sent the order in question,—that is, appproximately,—I don't guess you can tell exactly?

A. Approximately west of St. Matthews.

Q. That is where he should have been?

A. Yes, sir.

Q. You cleared him through Kingville coming down this way?

A. Yes, sir.

Q. And that is where you thought he was?

A. Yes, sir.

Q. And where he should have been?

A. Approximately, yes, sir.

Q. The operator at St. Matthews would go on at eight A. M.?

A. Yes, sir.

Q. I believe you stated that in the twenty-four hour a day offices that there are three operators in each office?

A. Yes, sir, three.

Q. And they are called first, second and third trick operators, I believe?

A. Yes, sir, they work in three shifts.

Q. At Orangeburg and Branchville operators there handle train orders, do they not?

A. Yes, sir.

Q. They deliver them to the crew?

A. They do upon receipt.

Q. The operators at those places control a board, which is really the signal apparatus?

A. Yes, sir.

Q. At Orangeburg the semaphore is used for orders?

A. Yes, sir.

Q. That is known as what?

A. The semaphore.

Q. It is up on a post?

A. Yes, sir.

[fol. 23] Q. And the operator is down on here?

A. Yes, sir, he operates it.

Q. The operator operates or controls that board?

A. Yes, sir.

Q. Show this to the jury—the operator is down in his office here, as I understand you?

A. Yes, sir.

Q. He manages that with a rope?

A. With a lever, yes sir.

Q. And he can drop either one of those at will (indicating the arms on the board to the jury and to the witness)?

A. Yes, sir.

Q. Both of those are painted red on one side and white on one side?

A. Yes, sir.

Q. On alternate sides?

A. Yes.

Q. Which was painted red?

A. It is according to the way you are going.

Q. It would control the train coming from the east and going to the west and so on?

A. The right hand would.

Q. This board would control extra 483 (indicating)?

A. Yes, sir.

Q. And the other board would control extra 723?

A. Yes, sir.

Q. When they are standing out that way it is called normal (indicating to the witness and the jury)?

A. Yes, sir, that means stop.

Q. And at Orangeburg they are always on duty?

A. Yes, sir.

Q. And they are always standing at "stop"?

A. Yes, sir.

Q. That is a twenty-four hour office, of course?

A. Yes, sir.

Q. They stand out this way (indicating)?

A. Yes, sir.

[fol. 24] Q. And only one is dropped at a time?

A. That is right.

Q. And when the train comes in, the operator gives them the signal by controlling that semaphore board?

A. Yes, sir.

Q. This one shows it dropped for a train moving from east to west?

A. Yes, sir, in that position.

Q. Now, suppose a train from Charleston or Branchville, and coming from the east and going west towards Columbia, approaches the station at Orangeburg, the semaphore would be in a normal position with the arms out like this?

A. Yes, sir.

Q. Now, a train approaching, or coming from the east towards Orangeburg—just before it gets to the station at Orangeburg, that board is standing out red as you have just stated?

A. Yes, sir.

Q. Then the engineer blows four blasts of the whistle?

A. Yes, sir.

Q. The rules require that he should?

A. Yes, sir, under the rules he should.

Q. When the engineer goes up the operator drops the board provided he hasn't anything for him?

A. Yes, sir.

Q. When the engineer blows four blasts for a signal the operator drops the red board down, provided he has no orders for him?

A. Yes, sir.

Q. Now, Mr. Pearce, the number of copies made of a train order depends on the number of trains affected by the order?

A. Yes, sir.

Q. When it is addressed to one train alone then it is a three copy order?

A. Yes, sir.

Q. One copy for the office and the other two to be given to the train crew?

A. Yes, sir.

Q. Now, in railroading that order that was sent—the one [fol. 25] we looked at, is called a middle order?

A. Yes, sir.

Q. That is the one addressed to Orangeburg?

A. Yes, sir.

Q. And the words "and operator" in the address, means five copies are to be made?

A. Yes, sir.

Q. And five copies is one copy for the office, and two copies for the engineer and conductor on one train coming in one direction, and tow copies for the engineer and conductor of the train coming in the other direction?

A. Yes, sir, that is right.

Q. When this order was sent from Charleston by Mr. Rogers it contained the words "and operator"?

A. Yes, sir.

Q. It was sent to Orangeburg reading "and operator"?

A. Yes, sir.

Q. Mr. Jones was the operator on duty at that time in the Orangeburg office?

A. Yes, sir.

Q. That is Mr. T. E. Jones?

A. Yes, sir.

Q. That order addressed as it was, and containing the words "and operator"—Mr. Jones should have made five copies of it?

A. Yes, sir.

Q. We were talking about trains—the more business on the railroad, the more trains we have?

A. Of course.

Q. There was still another train at Orangeburg that morning?

A. I think the records show that number 61 was there at Orangeburg, but I can only tell that from the records, and I was not on duty at that time.

Q. That is known as the local freight?

A. Yes, sir.

Q. That handles freight movements at the stations along the line?

A. Yes, sir.

Q. That local was number 61?

A. Yes, sir.

Q. That holds the number of the engine, too?

[fol. 26] A. No, sir, that is a scheduled train.

Q. It would not necessarily then hold the number of the engine?

A. No, sir, not on a schedule train.

Q. In that vicinity we had first disabled extra train number 683 at Fort Motte?

A. Yes, sir.

Q. We had extra 723 at or near St. Matthews?

A. Yes, sir, approximately there.

Q. Coming eastward?

A. Yes, sir.

Q. And you know St. Matthews is between Orangeburg and Fort Motte, the place of the disabled train.

A. Between the two stations, yes.

Q. And we had extra 483 going to Andrews yard?

A. Yes, sir.

Q. We had scheduled train number 12, which was a passenger train, in Orangeburg about the same time?

A. Yes, sir, that was the passenger.

Q. It was due in Orangeburg at about that time?

A. It was due at 9:01.

Q. The collision occurred when?

A. At 9:30, I think.

Q. You were, of course, not on duty?

A. No, sir, not then.

Q. Then you had local freight number 61?

A. Yes, sir.

Q. Then you kept a switching service train in there at Orangeburg too?

A. No, sir, not at that time.

Q. You put it on later then?

A. Yes, sir.

Q. You know the location of 61 at the time of the collision?

A. No, sir, I could not tell.

Q. You could tell from the records?

A. No, sir.

Q. Why?

A. I could tell he was at Orangeburg, but I don't know what track he was on or anything about that.

Q. You know he was there somewhere?

A. Yes, sir.

[fol. 27] Q. I think he was there.

A. I think so too, but I would have to look at the records and see, and then we couldn't tell exactly where he was.

Cross-examination.

By Mr. Harley:

I am now a train dispatcher in Charleston, and was also that in January, 1924. The duties of a train dispatcher are to direct and supervise the movements of trains by train orders and otherwise. In January, 1924, we had three working in the train dispatcher's office in Charleston. The Chief Dispatcher was Mr. Fox, who is now dead. I went on duty at twelve o'clock midnight and worked until eight A. M., when I was succeeded by R. L. Rogers. As train dispatcher I had control of trains on the Charleston Division—

Charleston and Columbia, and Charleston and Augusta. All special trains and all extra trains are operated by train orders. About seven o'clock on the morning in question extra 683 west, that is, going west from Orangeburg to Columbia, became disabled at Fort Motte, which is about nineteen miles west of Orangeburg. Branchville is a junction point. We have a line from Branchville to Columbia through Orangeburg, and also one from Branchville to Augusta, Georgia. At that time we had an extra crew at Branchville to do extra work and handle disabled trains. This crew was composed of Conductor Youngblood and Engineer Dantzler and Fireman Witherspoon. They also did switch work in the Branchville yards. When I received information as to the disabled train at Fort Motte, I ordered Conductor Youngblood and Engineer Dantzler to proceed to Fort Motte and take this disabled train in to Andrews yards near Columbia. They were called out by the Branchville operator, and I was informed that they would be ready presently at 7:55 A. M. That train consisted of [fol. 28] nothing but the engine and tender. Mr. Youngblood was the conductor, Mr. Dantzler the engineer, and Mr. Witherspoon the fireman.

Q. Then you put out this order?
A. Yes, sir, Mr. Rogers did.
Q. He had just come on duty?
A. He had, yes sir.
Q. At eight A. M.?
A. Yes, sir.
Q. And you knew he put it out then?
A. Yes, sir.
Q. What order did you put out?
A. Mr. Rogers put out order number eighteen.
Q. It was put out while you were there?
A. Yes, sir.
Q. And while he was relieving you?
A. Yes, sir.
Q. What was that order?
A. It was addressed to Orangeburg, and extra 723 East——
Q. It was addressed to J. D.?
A. Yes, sir.

Q. And that is Orangeburg?
A. Yes, sir.
Q. Now, what was that order?
A. It was addressed to J. D., which is Orangeburg, and it says, Extra 723 east, and operator, and to B. V., which is Branchville—Extra 723 east gets this order and meet extra 483 west at Orangeburg. Engine 483 run extra, Branchville to Andrews.
Q. At that time where was extra 723?
A. I thought he was in the vicinity of St. Matthews.
Q. He had not gone to Orangeburg?
A. He had not gotten there yet.
Q. Now that is a 31 order?
A. Yes, sir.
Q. And the Conductor has to sign for it?
A. Yes, sir.
Q. And he gives a copy to the engineer?
A. Yes, sir.
Q. And it is read in the presence of the fireman?
A. Yes, sir.
[fol. 29] Q. Then that order was sent out simultaneously?
A. Yes, sir.
Q. That is, all of them got it at one time.
A. Yes, sir.
Q. Orangeburg and Branchville?
A. Yes, sir.
Q. That is what you sent out (indicating order to the witness)?
A. That is what Mr. Rogers sent out.
Q. While you were still in the office?
A. Yes, sir.
Q. These are similar orders?
A. Yes, sir, those are similar.

Mr. Harley: We introduce these orders in evidence, there being two in number—one being found in the possession of Mr. Cleveland J. Youngblood, and the other being found in the possession of Mr. Dantzler, the engineer. We also introduce the order, which shows the signature of Conductor Youngblood when it was delivered to him at Branchville before his departure.

The Court: I understand that is the identical order to what the witness has read.

Witness: Yes, sir.

Mr. Harley: Yes, sir, out of the book there. That is what was transmitted from Charleston that he read, and these are the orders.

(Orders offered in evidence by the defendants, and marked by the stenographer as Exhibits A. and B. for the defendants.)

Mr. Wolfe: To keep the record straight, the other message you have, some of your officers got that off of Mr. Dantzler, but we produce this one from Mr. Youngblood as it was sent to Branchville with his clothes and personal effects. That is the fact of the matter.

Mr. Harley (continuing):

[fol. 30] Q. Was another order sent out affecting train number 61?

A. Yes, sir.

Q. By whom?

A. Mr. Rogers.

Q. What was that?

A. Order number 19, J. C., extra 723 East—N—which is Rowesville—extra 723 east gets this order, meet number 61, engine 513, at Orangeburg, instead of Rowesville.

Q. That order was sent out immediately after this order?

A. Twenty minutes later.

Q. Where was 61 when that order was sent out?

A. Rowesville.

Q. Between Orangeburg and Branchville?

A. Yes, sir.

Q. How far from Orangeburg?

A. Eight miles east of Orangeburg.

Q. Where was it going?

A. It was going west.

Q. Then did it stop at Orangeburg for extra 723?

A. Yes, sir, they pulled in the siding at Orangeburg.

Q. That was number 61?

A. Yes, sir.

Q. About how many tracks do you find at stations generally?

A. There is a house track and a siding and two or three commercial tracks.

Q. Then there is a passing track?

A. Yes, sir.

Q. What is the difference?

A. A passing track is used to pass trains and exclusively for that purpose, while a house track is for cars to be loaded and unloaded.

Q. Where was that passing track at Orangeburg?

A. It was about 4500 feet long commencing on the Columbia side of the station at Orangeburg, and about seventy-five yards from the station.

Q. Now, Mr. Pearce, a train having an order going into Orangeburg to meet a train, it is necessary to go by the depot and the semaphore board?

A. Yes, sir, in order to gain entrance to the passing track.

[fol. 31] Q. Trains do not go in the house track?

A. No, sir.

Q. But they must go in the passing track, as I understand you?

A. Yes, sir.

Q. It is used exclusively for trains to pass?

A. Yes, sir.

Q. And local trains do not go in that pass track?

A. No, sir, it is for trains passing each other.

Q. For trains going to Columbia, it is necessary to pass the depot and the board—that semaphore board now, and come up, and go in seventy-five yards to the west of the passenger depot in Orangeburg?

A. Yes, sir, about seventy-five yards.

Orangeburg is seventeen miles from Branchville. Branchville is eight and one-half miles from Rowesville. St. Matthews is twelve and a half miles from Orangeburg and is seven miles from Fort Motte. At Branchville and Orangeburg the office is open all day and night. St. Matthews is a day office, and the hours there are from eight a. m. until five p. m.

Q. Now, something has been said about this particular order, regulating the movement of this extra train number 483—that train was sent out on that order number eighteen, read to the Court and the jury?

A. Yes, sir.

Q. That order which is shown by the register or book that you have used, was addressed to Orangeburg, which is J. D., and operator?

A. Yes, sir, extra 723 east and operator.

Q. To the train and to the operator?

A. Yes, sir.

Q. It was addressed at Branchville to the train?

A. To engine 483.

Q. And to that engine only?

A. Yes, sir.

Q. The operator at Orangeburg and at Branchville got [fol. 32] that message at the same time?

A. Yes, sir.

Q. It was sent out simultaneously you say?

A. Yes, sir, and to each one.

Q. When it was received at Branchville it was received by Conductor Youngblood?

A. Yes, sir.

Q. He signed for it at Branchville?

A. Yes, sir.

Q. And it showed on its face that he was to meet extra train number 723 at Orangeburg?

A. Yes, sir.

Q. Is there anything on its face to indicate that he was to receive any other order at Orangeburg?

Mr. Wolfe: The order is in evidence, and would speak for itself.

The Court: That is true, but this man is supposed to be an expert, and there may be something on the order that the average man would know nothing about, and that this man would know.

Mr. Harley (continuing):

Q. That was not the message that went to Branchville (indicating to the witness)?

A. No, sir.

Q. Well, what did you hear next about an accident, Mr. Pearce, if you heard anything?

A. I was off duty at the time the accident occurred.

Q. Now, which was a superior train?

A. Extra 723 east was the superior train.

Q. By what authority?

A. By time table authority.

Q. That order that you received and put out there as shown on your register was to go to Orangeburg and operator?

A. Yes, sir.

Q. And it also went to the train or engine at Branchville?

A. Yes, sir.

Q. The message was the same?

A. Yes, sir.

Q. The particular engine was to meet extra train number 723, which at that particular time was at about what place [fol. 33] west of Orangeburg?

A. In the vicinity of St. Matthews.

Q. Was there anything to indicate on the order, Mr. Pearce, anything from which Mr. Youngblood would think that he was going to get another order at Orangeburg?

A. Absolutely nothing.

Q. That order read that he was to meet extra train number 723 at Orangeburg?

A. Yes, sir.

Q. He had that in his possession?

A. Yes, sir.

Q. A copy was delivered to the agent at Orangeburg?

A. To the operator there, yes, sir.

Q. The only order that he had was telling him to do what?

A. To meet extra 723 at Orangeburg.

Q. If it had been a five copy order it would have been the same thing that he had in his pocket?

A. It would have been absolutely the same thing, yes, sir.

Extra trains and all trains not run on a schedule or time table are run by written train orders and not by verbal orders. Written train orders will remain in effect until they are superseded, annulled or fulfilled. That is the first part of rule number 220 in the rule book of the Southern Railway Company in effect at that time. It says "train orders once in effect continue so until fulfilled, superseded or annulled."

Q. Now, Mr. Pearce, had that order number eighteen that was issued been superseded?

A. No, sir.

Q. Had it been annulled by any other order?

A. No, sir.
Q. Or had it been fulfilled?
A. It had not.
Q. It was in effect then at the time of the accident?
A. Yes, sir.
Q. Where did the accident occur?
A. Just west of Stilton.
Q. Where is that?
A. Two and seven-tenths miles west of Orangeburg.
[fol. 34] Q. Towards Columbia?
A. Yes, sir.
Q. And between Orangeburg and St. Matthews?
A. That is correct, yes sir.
Q. This engine 483 ran into engine 723?
A. Yes, sir.
Q. And resulted in what?
A. It resulted in the death of Mr. Youngblood, the conductor.
Q. And also Mr. Dantzler?
A. Yes, sir, he was the engineer.
Q. And who else?
A. On the other train, Conductor Ulrich, and Engineer Brown, and a colored fireman, I don't recall his name right now.
Q. This particular engine, extra number 483, had gone on through the city of Orangeburg?
A. Yes, sir.
Q. On the main line?
A. Yes, sir.
Q. And extra 723, when the order was put out, was where?
A. In the vicinity of St. Matthews somewhere.
Q. When was extra 723 to get a copy of this order number 18, that was put out?
A. When he arrived at Orangeburg.
Q. And when extra 483 should have been there waiting for him?
A. Yes, sir.
Q. Instead of running through Orangeburg?
A. That is correct, yes.
Q. Number 483 ran through Orangeburg and headed towards what place?
A. It headed towards St. Matthews when it left Orangeburg.

Redirect examination.

By Mr. Brown:

I have been a dispatcher ten years in Charleston, and had been a dispatcher seven years when this thing took place over near Orangeburg. Dispatchers and operators, under the Federal law, work at eight hour periods. And where you have an all-night force, as in Charleston, [fol. 35] Orangeburg, Branchville and Columbia, the morning dispatcher goes on at 8 o'clock in the morning and works until 4 o'clock in the afternoon, and the other one goes on at four and works until twelve o'clock midnight, and the third trick man starts at twelve o'clock mid-night and goes off at eight o'clock in the morning. The orders that might have caused this thing happened just as I was going off and as Mr. Rogers was coming on in Charleston, and just as the operator in Branchville was going off and the other one was coming on, and just as Mr. Jones was going off duty at Orangeburg and as Mr. Tyson was coming on duty. It was right around eight o'clock in the morning. It might have been a cold, foggy day, but I don't remember about that. I did not write that order on the book and hand it to Mr. Rogers, but I stayed in the office until he transmitted it.

Q. You had, however sent out the order for the men at Branchville, who had been up all night at work, to come back on duty?

A. I started the preparation for the movement.

Q. You advised Mr. Rogers what you had done?

A. Yes, sir.

Q. And you advised Mr. Rogers from the records that you were keeping where extra 723 was?

A. Approximately, yes.

Q. You said you thought that extra 723 was approaching or was in the vicinity of St. Matthews?

A. I still think it.

Q. You advised him that?

A. Yes, sir.

Q. St. Matthews office opens at eight o'clock in the morning?

A. Yes, sir.

Q. And you didn't try and get a copy of that order to St. Matthews for extra 723?

A. The operator had not come on duty yet.

[fol. 36] Q. How did you know at two minutes of eight o'clock,—how did you know the operator was not in St. Matthews,—and why did you and Rogers take the chance of not notifying extra 723 that they were to meet a train at Orangeburg?

A. The operator at St. Matthews did not begin until eight A. M. I told you.

Q. It took you longer than two minutes to get that order from Charleston to St. Matthews?

A. Approximately two minutes.

Q. Wouldn't it have been a simple thing, Mr. Pearce, to have had St. Matthews copy this order when you sent it to the others along the line?

A. No, sir, we had no way of telling but what extra 723 had already passed St. Matthews, as the operator was not on duty before eight o'clock.

Q. You said awhile ago that you thought extra 723 was approaching St. Matthews?

A. Yes, sir, I said I thought it was in the vicinity of St. Matthews and I still think it was.

Q. If it was approaching St. Matthews, and you had sent a copy of the order there for number 723,—then they could have been on the look-out?

A. We cannot work on thoughts, Mr. Brown, but we have to have the trains out before we can place a 31 order. You can't imagine so and so.

Q. When you as a dispatcher are sending these orders you are dealing with human life?

A. Yes, sir, and that is why we canont think, we have to know.

Q. Wouldn't it have been simple enough for you to have endeavored to get St. Matthews on the line when you got Orangeburg and Branchville?

A. We would have had to have waited until 723 arrived at St. Matthews before we could have issued any order to him one way or the other.

[fol. 37] Q. That would have been an extra precaution?

A. I don't know as it would.

Q. You didn't wait until he arrived at Orangeburg to issue this order number eighteen, but you issued it forty-five minutes before he got there?

A. No, sir, I did not because I had an operator on duty for twenty-four hours at Orangeburg, and I knew he had not passed Orangeburg.

Q. You are morally certain that extra 723 had not passed St. Matthews?

A. Yes, sir.

Q. Then didn't you have time to take an extra precaution and send a copy of the order to St. Matthews?

A. I didn't put out the order.

Q. You had started it?

A. Yes, sir, I issued preparations for the movement of the extra 483.

Q. Before Mr. Rogers came on duty?

A. Yes, sir.

Q. You didn't suggest to Lee Rogers that extra train number 723 is approaching St. Matthews, and to give him a copy of the order?

A. I cannot guess at this business.

Q. The first thing your Company requires is caution in the exercise of your duties?

A. Yes, sir.

Q. And especially as to meet orders?

A. Yes, sir.

Q. You said awhile ago, Mr. Pearce, that this extra train number 723 was a superior tsain,—don't you know that a 31 order, directing the movements of extra trains, puss them all on a common level, and that each has to do exactly what the order says, and that neither train is superior to the other?

A. No, sir, they still retain their superiority.

Q. What gives one extra train superiority over another extra train?

A. The direction in which he is traveling.

Q. Read this order number eighteen again?

[fol. 38] A. Extra 723 East gets this order and meet extra 483 at Orangeburg, and engine 483 run extra to Andrews.

Q. That is order number eighteen?

A. Yes, sir.

Q. And that is the order involved in this case?

A. That is the one.

Q. What does it say,—read it again?

A. It says extra 723 east gets this order and meet extra 483 west at Orangeburg, and engine 483 west run extra to Andrews yard.

Q. It says to Andrews?

A. Yes, that is where the yards are located.

Q. That meant that 483 was running from Orangeburg to Columbia, as stated?

A. Yes, sir.

Q. Which you call west?

A. Yes, sir.

Q. That was an extra train?

A. Yes, sir.

Q. And you issued the order for them to meet this extra train number 723 at Orangeburg?

A. Yes, sir.

Q. Now read the order and see how extra 483 was running?

A. According to this order it is going east.

Q. It is going east on that order?

A. According to the order, yes, sir.

Q. Read what the other order says?

A. Extra 723 gets this order and meet extra 483 west at Orangeburg. Engine 483 run extra Branchville to Andrews.

Q. That is what the order says?

A. Yes, sir, I have just read it.

Q. You told Mr. Harley,—well, if anybody balled this matter up, the first ball was made in whoever copied that order in Orangeville and Branchville,—you say they have changed the order in which the trains were running?

A. That order is not identical with this one.

Q. Then somebody made an error to start with?

A. Yes, sir.

Q. You were summoned here by the Railroad Company?

[fol. 39] A. Yes, sir.

Q. We took your testimony at the previous trial also?

A. Yes, sir.

Q. And we took your deposition in Charleston?

A. Yes, sir.

Q. You said yesterday, Mr. Pearce, that a 31 order was a five copy order?

A. No, sir, I said it could be a three or five or seventeen for that matter.

Q. A 31 order to train crew and operator was a five copy order?

A. Yes, sir.

Q. That order is directed to the train crew and operator?

A. Yes, sir.

Q. That meant when it got to Orangeburg that the agent or the operator there kept a copy?

A. Yes, sir, in his files.

Q. And a copy had to be either received or receipted for or delivered to both the engineer and conductor on the trains that were meeting?

A. Yes, sir.

Q. Mr. Brown and his conductor had to sign for it?

A. The conductor did.

Q. Well, it was two copies for that crew?

A. Yes, sir.

Q. The copy or two copies had to be handed to Engineer Dantzler and Mr. Youngblood on the other train?

A. Yes, sir.

Q. By the operator?

A. Yes, sir, wherever it is practicable.

Q. Branchville is seventeen miles below Orangeburg?

A. Yes, sir.

Q. And St. Matthews is twelve and a half miles west of Orangeburg, you stated here yesterday?

A. Yes, sir.

Q. Extra 723 was a heavy train?

A. Yes, sir.

Q. And was running down grade?

A. No, sir, it is up hill.

[fol. 40] Q. Although it was going from Columbia down to Charleston, you say it was up hill?

A. Yes, sir.

Q. The general contour is that a train going from Columbia to Charleston is going down grade?

A. No, sir, our map does not show that.

Q. Extra 723 was coming down that road without any notice of stop orders or meet orders?

A. His movement is generally slow.

Q. Answer my question—was it a through train?

A. Yes, sir, and of course they have local cars for different places along.

Q. It was called a through freight?

A. Yes, sir.

Q. They run at a rapid rate of speed.

A. No, sir, their speed limit is thirty miles an hour.

Q. And a train going thirty miles an hour from Columbia to Charleston, you don't take the precaution to notify them twelve and a half miles away from where they were to meet another train?

A. No, sir.

Q. Didn't you testify yesterday that extra number 483, when it approched Orangeburg had to call for orders by giving four blasts of the whistle?

A. Yes, sir.

Q. When that train got to Orangeburg, that is the board (indicating to the witness), that is always on?

A. Yes, sir.

Q. That top diagram is what you call "holding the red on them," isn't it?

A. Yes, sir.

Q. Standing out this way with the arms extended (indicating to the witness)?

A. Yes, sir.

Q. He could not pass that semaphore board until today if that board had stayed with the arms out, and the red danger signal hanging over them?

A. Yes, sir, he could pass in order to reach entrance to the sidetrack or passing track.

Q. When that man blows for orders as he approaches the [fol. 41] station and the semaphore board is held red on him—what is his duty—is to go in and see if they changed orders on him?

A. Yes, sir, if the board is red, except to reach entrance to the side track.

Q. But you testified—didn't you testify that when he approached there that this thing was red on him?

A. Yes, sir, in normal position.

Q. If it was not necessary for him to get further orders and he had orders—why should he go for the orders?

A. It is required by the rules. They have to sound the whistle four times for train order signals.

Q. When he did not get them what was his duty?

A. He would stop.

Q. If when he blew for the order signal and he got that board, (indicating to the witness on diagram)—what would he do?

A. He would proceed.

Q. What would that mean?

A. We have no train orders here for you.

Q. If he got that—it says proceed?

A. Yes, sir.

Q. And that is a clear signal?

A. Yes, sir.

Q. If he got any answer to his four blasts of the whistle at that place—at that station, the dropping of the right arm of the board, which indicates clear track, and no orders for you, didn't he have a right to proceed under the rules of the Southern Railway Company?

A. No, sir, it only indicates we have no orders for you at this station.

Q. Didn't you testify that the five copy order meant that the agent at Orangeburg had a copy of the order for him?

A. According to the records.

Q. According to the records they issued a five copy order to trainmen and operator?

A. Yes, sir.

Q. Which meant if the operator at Orangeburg had performed his duty under the rules that a copy of that order [fol. 42] would have been delivered to Dantzler and Youngblood each?

A. Yes, sir.

Q. Now, if it had been a three copy order, doesn't the rules require that a copy be delivered to the first train that approaches the station?

A. Yes, sir, regardless of how many copies he has.

Q. If there was but one copy, he should have delivered it to the first train reaching Orangeburg?

A. Yes, sir, he would have to give the first train a copy of the order.

Q. Now, you said awhile ago that in order for him to go in the side track under the order, he didn't have to have the white board—he could have gone on into the side track?

A. Yes, sir.

Q. It was not necessary for Tyson and Jones to give him the white board to go in there?

A. No, sir, but he could not leave the station then without coming and getting orders.

Q. To go into the side track he didn't have to have the white board?

A. No, sir, not anything.

Q. When he got the red board and it dropped down—it is a question for a man's own judgment and conscience as to what that meant when you all had the orders?

A. It didn't mean that.

Q. There is no doubt about that order being balled in this thing here (indicating)?

A. It is not identical with the copy in the book.

Q. There is no doubt about the fact that when Youngblood and Dantzler reached there, they are entitled to an additional copy of this order?

A. When it is practicable.

Q. I want to know which is the most practicable, to deliver it when he calls for the signal—when he was in twenty steps of him, or to give him a white board, and let him [fol. 43] proceed in a fog so dark you couldn't see a man ten feet from you in the direction of a train coming without notice, where he had run seventeen miles, and the other train had twelve miles to run—which was the most practicable thing in your judgment—do that, or hand this man the order?

A. The most practicable time to hand it to any of them is when they reach the semaphore signal.

Mr. Wolfe: We offer in evidence the train order book of the dispatcher. That is, in so far as it relates to that order.

Mr. Harley: That is in so far as that particular train is concerned?

Mr. Wolfe: Yes, sir.

(Time table in effect offered by the plaintiff in evidence by the plaintiff, and marked by the Stenographer as Exhibit No. Six in this case.)

The Witness (continuing): That order in the train order book is in the handwriting of Mr. Rogers. That is the time table that was in force at that time on the Columbia and Charleston division.

(Time table in effect offered b- the plaintiff in evidence and marked by the Stenographer as Exhibit No. Seven in this case.)

Redirect examination.

By Mr. Wolfe:

Train number 483 and train number 723 were both extra trains. Train number 483 was moving westward, and extra train number 723 was moving eastward. That time table does not affect either of these trains. According to the [fol. 44] rule book of the company in effect then, east bound trains of the same class are superior to west bound trains of the same class. That rule is number 72. It reads: "Trains of the first class are superior to those of the second; trains of the second class are superior to those of the third, and so on." It goes on and says "trains in the direction specified by the time table are superior to trains of the same class in the opposite direction."

Q. Isn't it a fact that a west bound train ordinarily is a superior train if they are of the same class?

A. They are superior on the Charleston division.

Q. A train moving in a westerly direction is a superior train, is it not?

A. You mean on the Charleston division.

Q. No, sir, I mean generally?

A. No, sir, westbound trains are inferior to eastbound trains generally.

Q. On the Charleston division, the time table makes tr-ins moving eastwardly superior over trains of the same class moving westwardly?

A. Extra trains are not covered by the time table.

Q. The time table has nothing to do with it, then?

A. No, sir.

Q. The time table cuts no figure in this case?

A. Only to show the movement of certain trains.

Q. Extra trains are moving by orders when they do move?

A. Yes, sir.

Q. The two trains in collision, extra 723 and extra 483, are not shown on the time table?

A. No, sir.

Q. And that time table has no application to the two trains in collision?

A. No, sir, only to show that they must run with respect to other trains.

Q. Now, this time table in reference to the question of superiority can only apply to regular trains?

A. Yes, sir, because that is all that is on there.

[fol. 45] Q. When you said in your examination to Mr. Harley that extra 723 was superior by authority of the time table—that was a mistake?

A. No, sir, it is not.

Q. Why?

A. By the time table.

Q. But that is for the regular trains?

A. Yes, sir.

Q. And you say that neither of the trains in question, extra 723 or extra 483, are shown on there?

A. They are not, no.

Q. That foot-note that Mr. Harley has called your attention to has nothing to do with the trains in question—that is, the two in collision?

A. I can answer you by the rule book.

Q. Now, you answer me, Mr. Pearce, as I am going to ask you a fair question—723 and 483 were both extra trains?

A. Yes, sir.

Q. No extra trains appear on the time table?

A. No, sir.

Q. And that time table cannot affect extra 483 and extra 723 as they affect each other?

A. Only in the rule book.

Q. The only thing in the time table that says anything about superiority is that foot-note?

A. Yes, sir.

Q. It says what?

A. All regular trains moving east are superior to trains moving west of the same class, etc.

Q. That time table has no reference to extra 723 and extra 483 at all.

A. The time table has not.

Q. Therefore, when you answered Mr. Harley that one was superior to the other by authority of the time table, you were wrong?

A. Yes, sir, the time table does concern them.

Q. Point it out?

A. It is not here.

Q. The rules relating to superiority of trains in the rule book are numbers 71, 72 and 73?

[fol. 46] A. Yes, sir, and there is still another one.

Q. What is that number?

A. Rule number 88.

Q. Read that?

A. It says "At meeting points between trains of the same class, the inferior train must clear the main track before the leaving time of the superior train." And it goes on and says: "At meeting points between extra trains, the train in the inferior time table direction must take the siding unless otherwise provided."

Q. That is the rule governing?

A. Yes, sir.

Q. And rules 71, 72 and 73 are read in connection with that?

A. Yes, sir.

Q. A passenger train is superior to a freight train?

A. Yes, sir.

Q. It would be the rule that governs the movements of trains and not this time table?

A. The rule says in the time table direction.

Q. Under the head of superiority of trains, I will read three rules:

71. A train is superior to another train by right, class or direction. Right is confererd by train order; class and direction by the time table. Right is superior to class or direction. Direction is superior as between trains of the same class.

72. Trains of the first class are superior to those of the second; trains of the second class are superior to those of the third; and so on. Trains in the direction specified by the time table are superior to trains of the same class in the opposite direction.

73. Extra trains are inferior to regular trains.

Q. Now, a superiority is a matter of right?

A. Yes, sir.

Q. And class and direction by time table?

A. Yes, sir.

[fol. 47] Q. And right is superior to class or direction?

A. Yes, sir.

Q. And a direction is superior, as between trains of the same class, according to the rules?

A. Yes, sir.

Q. Now as I have read them, that is the three rules in reference to superiority of trains?

A. Yes, sir.

Q. Now, Mr. Pearce, this is the rule book of the Southern Railway Company (indicating to the witness)?

A. Yes, sir.

Mr. Wolfe: I will put the book [redacted], and before the case is over both of us will see which rules we think are competent in this case.

Cross-examination.

By Mr. Harley:

Q. Just a few more questions, Mr. Pearce, counsel has said something about or questioned whether or not extra 723 was a superior train to extra 483,—explain to the jury why extra 723 was a superior train at that time to train 483?

A. Well, they were both of the same class in so far as the fact that they were extra trains is concerned.

Q. Those rules and the time table were in effect at that time, you stated?

A. Yes, sir.

Q. Now, explain why number 723 was a superior train?

A. The time table says that all regular trains from West End to Charleston are superior to trains of the same class moving in the opposite direction. On the next page it says from Columbia to West End, and we will cover that. That is in accordance with general rule 72.

Q. What is rule 72?

A. It says "Trains of the first class are superior to those of the second; trains of the second class are superior to those of the third, and so on. Trains in the direction speci-
[fol. 48] fied by the time table are superior to trains of the same class in the opposite direction."

Q. Read rule 73 to the jury?

A. "Extra trains are inferior to regular trains."

Q. What is the next one?

A. Rule 88 in part says: "at meeting points between trains of the same class, the inferior train must clear the main track before the leaving time of the superior train. At meeting points between extra trains, the train in the inferior time table direction must take the siding unless otherwise provided." Therefore, extra 723 was superior to extra 483 going west by right of the time table direction.

Q. Now, 483 without any authority at all directing it to stop at Orangeburg, it being an inferior train, should have taken the siding at Orangeburg without any train order?

A. Yes, sir.

Q. By direction 723 was a superior train?

A. Yes, sir.

Q. In accordance with the rules and time table?

A. Yes, sir.

Q. And extra 483 was an inferior train?

A. Yes, sir.

Q. Under the rules and time table, in order to make extra 483 superior to extra 723, he would have to have orders from the Dispatcher giving him the right?

A. Yes, sir, he would have to have them.

Q. You know a semaphore board?

A. Oh, yes, sir.

Q. When an agent or operator is on duty all of the time it is out showing red?

A. Yes, sir.

Q. When he is off duty it is up?

A. No, sir, it is dropped to sixty degrees.

Q. With the hands out this way it is to stop?

A. Yes, sir.

Q. Do you know where the semaphore is in Orangeburg?

[fol. 49] A. Yes, sir.

Q. Now, Mr. Pearce, in approaching a station with an order number eighteen as read here, state whether or not it was necessary for extra 483 to stop and see if the order had been changed in any way?

A. No, sir, it was not. It was his duty to stop and go in the side track at Orangeburg though.

Q. If that semaphore board said to pass by, what would it mean then?

A. It would mean we have no further orders here for you.

Q. He was to go on and get in the side track?

A. Yes, sir.

Q. Now, this order number eighteen put out to the train crew at Branchville and at Orangeburg, if the agent had been on duty at St. Matthews, eleven miles west of Orangeburg, a copy of the order given to the crew at St. Matthews, would that change the situation any?

A. No, sir, absolutely not.

Q. Why?

A. Because the extra 723 had a right to come on down to Orangeburg under that order.

Q. You were starting this train to go through Orangeburg and to Fort Motte to the disabled train that was located there?

A. Yes, sir.

Q. Then they gave extra 483 a copy of this order?

A. Yes, sir.

Q. Both train crews had that order?

A. No, sir, the one at Branchville was supposed to get it.

Q. Extra 723 never did get to Orangeburg then?

A. No, sir.

Q. In transmitting this order simultaneously to Branchville and Orangeburg, and if you had also added the St. Matthews operator, if he was on duty—and it was a five copy order—that would have been absolutely the same order?

A. Yes, sir.

[fol. 50] Q. The same as extra 483 had already?

A. Yes, sir.

Q. And if extra 723 got a copy of the order at St. Matthews it would have come on to Orangeburg as it did, or as it started to do?

A. Yes, sir.

Q. But 723 did not reach Orangeburg?

A. No, sir.

Q. The wreck occurred two and a half miles on the other side?

A. Yes, sir, west of Orangeburg.

Q. In whose territory was that?

A. In extra 723's territory.

Q. So you say that even if extra 723 had gotten a copy of the order that was put out by the dispatcher in

Charleston, it would not have made any difference whatever?

A. No, sir.

Q. Why?

A. It was giving him a meet order for extra 483 at Orangeburg and he would have proceeded under this order just as he was doing.

Q. He would be getting a copy of the order that extra 483 already had?

A. Yes, sir.

Q. And extra 483 had this meet order at Orangeburg?

A. Yes, sir.

Q. And was supposed to stop there?

A. Yes, sir.

Q. Read rule 105 to the jury?

A. Rule 105 says "both the conductor and the engineman are responsible for the safety of the train and the observance of the rules, and, under conditions not provided for by the rules, must take every precaution for protection. When two or more engines are attached to a train each engineman must have a copy of the train orders and each will be responsible for observance of the rules."

Q. And this engine, extra 483, was in charge of Conductor Youngblood?

A. Yes, sir, and Engineer Dantzler.

[fol. 51] Q. And when they left Branchville that morning they had a meet order at Orangeburg,—which was order number eighteen as read here,—to meet extra 723 at Orangeburg?

A. Yes, sir.

Q. They receipted for that order?

A. Yes, sir.

Q. And this accident in which five lives were lost occurred two and a half miles west of Orangeburg in the territory of extra 723?

A. Yes, sir.

Redirect examination.

By Mr. Brown:

I have the train sheet here, which shows that extra 723 reached St. Matthews that morning at 8:18 A. M., and left

there at 8:25 A. M. That was twenty-five minutes after the operator at St. Matthews should have come on duty. I had a right to assume he was there. Any time after eight o'clock I had a right to call him and expect him to be on duty.

Q. And that train was there nearly a half an hour after the order was issued?

A. Yes, sir.

Q. It was not given to him at St. Matthews?

A. No, sir.

Q. He didn't have the order?

A. It was at Orangeburg for him.

Q. Isn't it a fact that the usual train order states which one will take the siding for the other one?

A. No, sir.

Q. You have never issued an order like that?

A. Yes, sir, if I want the superior train to go in the siding I will specify in the order.

Q. With two trains of equal class, you have never issued an order stating which will take the siding for the other?

A. I have.

Q. The local train from Columbia to Branchville was playing in side track that morning?

[fol. 52] A. According to the records it was there.

Q. In Orangeburg?

A. Yes, sir.

Q. The train that went in had to go to the west end of the side track towards St. Matthews to go in there?

A. No, sir.

Q. The two extra trains,—they were extra trains?

A. Yes, sir.

Q. Well, we will presume that they were equal in class,—if the situation was such that number 61 was in the side track, popping off steam, and the situation was such that it was necessary for the train that went in the side track to go in from the west end and towards St. Matthews,—which train would have been proper to go in there,—the train that was coming or the one that was to go up there to the other end in another man's territory?

A. He was in the other train's territory when he got out of the yards at Orangeburg.

Q. You say that extra 483 ought to have had instructions before it passed that semaphore board?

A. Yes, sir.

Q. Which train would have been the proper one to have gone in the side track then?

A. In my opinion,——

Q. I don't want your opinion,—which is the most practical thing,—the train from St. Matthews had no orders, although it had twenty-five minutes in which to get them, and they were equal in class,—was it the best railroading to send in 483 into the other man's territory and into the side track from the west end?

A. The best railroading was to put 483 into the side track as the other man had about sixty cars.

Q. At which end of the track?

A. On the east end of the track. If it became necessary for him to go down and go in the west end of the track, the rules provided that he could do that under the proper protection.

[fol. 53] Q. If operator Tyson had instructions to put extra 483 in the side track, he should have gone into the east end?

A. We don't give the operators orders to put them in.

Q. Don't you know from your own knowledge of this case that an order was issued by Tyson to go to the other end of the side track and go in the siding, and that the board told him to high ball?

A. No, sir, I don't know that. I heard that Tyson said that, but I was out of the Court House. A verbal order is not the best order and he should not have given him a verbal order.

Mr. Brown: We offer in evidence the entry on this train sheet by the railroad, showing that extra train number 723, which is involved in this controversy, arrived at St. Matthews at 8:18 A. M., and departed according to the records at 8:25 A. M. on the day in question.

(Train sheet offered in evidence by the plaintiff, and marked by the stenographer as Exhibit No. Nine.)

R. L. ROGERS, a witness for the plaintiff, sworn, testified as follows:

Direct examination.

By Mr. Wolfe:

I am forty years of age, and live in Charleston. My business is train dispatcher of the Southern Railway Company. I succeeded Mr. Fox, who is now dead, and since that time I have been promoted to Chief Dispatcher. I have served in the capacity of train dispatcher since 1908, and I served in that capacity on January 3, 1924, in the office of the Southern Railway Company at the corner of King and Anne Streets in Charleston. On the morning of the accident I went on duty at 7:55 A. M., succeeding Mr. Pearce. About two minutes after I went on duty I [fol. 54] sent order number eighteen. The purpose of 483 was to relieve the disabled train at Fort Motte. The information as to the disabled train was given me through Mr. Pearce, the train dispatcher whom I relieved, and I took steps immediately to relieve the disabled train.

Q. You are familiar with the order number eighteen?

A. Yes, sir, I sent that.

Q. Is that the original order made at the time (indicating to the witness)?

A. Yes, sir.

Q. That is the train dispatcher's record?

A. Yes, sir.

Q. You sent that to the operators both at Branchville and Orangeville?

A. Yes, sir.

Q. And Mr. Von Lehe at Branchville was on duty?

A. Yes, sir.

Q. Is that order as it appears on the book as it is written?

A. Yes, sir.

Q. You wrote it down at the time, I mean?

A. Yes, sir.

Q. The two words "and operator" appear in the record, and they were in the order that you sent to Mr. T. E. Jones at Orangeburg?

A. Yes, sir.

Q. You sent the same thing to Mr. Von Lehe at Branchville?

A. Yes, sir, only to engine 483.

Q. And Mr. Jones, the operator at Orangeburg, repeated it back to you?

A. Yes, sir.

Q. And you copied it down?

A. Yes, sir.

Q. The two words "and operator" were in it as you sent it?

A. Yes, sir.

Q. And as it was repeated back to you?

A. Yes, sir.

Q. When he repeated it back to you that was practically a receipt for it?

A. Yes, sir.

Q. What was the next thing you heard about the two [fol. 55] trains,—723 and 483 after you sent this message?

A. I held the 483 at Rowesville on number twelve, and they had been delayed around Riley a few minutes.

Q. You placed the train order at Rowesville?

A. Yes, sir, a train order.

Q. If the pasenger train had not been delayed 483 should have passed it at Rowesville?

A. Yes, sir, or Felders.

Q. The train order was that number twelve would wait at the packing house switch at Orangeburg?

A. Yes, sir.

Q. That is about a half mile east of Orangeburg at the fair grounds there?

A. Yes, sir.

Q. That train order to Rowesville was number twenty?

A. Yes, sir.

Q. I believe that was this way—order number twenty, Orangeburg on form twelve—with number twelve, engine 1055—wait at packing house switch in Orangeburg for train number, etc.—you said that "for" was left out?

A. My record is correct here, but I have never seen a copy of the order.

Q. Then train number 483 was reported by Rowesville by operator Witherspoon?

A. Yes, sir.

Q. That train order was completed when?

A. At 8:52.

Q. Who succeeded Mr. Jones as operator at Orangeburg that morning?

A. Mr. J. A. Tyson, Jr.

Q. Did Mr. Tyson call you up or did you speak to him?

A. After number twelve passed, I don't remember whether I called Mr. Tyson or he called me, but I think I followed it up and asked if extra 483 was coming.

Q. You were trying to get extra 483 to Fort Motte as quickly as possible?

A. Yes, sir.

Q. You asked Mr. Tyson if extra 483 was coming?

[fol. 56] A. Yes, sir.

Q. He said what?

A. That it was coming.

Q. What did you tell him then?

A. To clear him and let him go to the west end of the pass track and wait on extra number 723.

Q. You told him to clear and tell him that?

A. Yes, sir.

Q. Meaning to wait at Orangeburg, of course?

A. Yes, sir.

Q. Under the rules governing the operation of trains on the Southern Railway Company, would this order number eighteen, coming as a holding order to number 483 and 723—should it be addressed to the operator?

A. Yes, sir.

Q. Would it be necessary for the operator to hand to the crew of number 483 a clearance card?

A. A copy of the order instructing them to go to the west end of the pass track and wait on number 723.

Q. He should have handed him a copy of that order?

A. Yes, sir.

Q. You have a copy of the rule book in your hand?

A. Yes, sir.

Q. Now, page 62, form 603, is a clearance card form?

A. Yes, sir.

Q. Prescribed by the rules?

A. Yes, sir.

Q. And it is used by the operator on the ground?

A. Yes, sir.

Mr. Wolfe: We offer that in evidence. It is the clearance card on page 62 of the rule book of the Company, and form number 603.

Mr. Wolfe (continuing):

Q. Now, you say—to go back a little bit—this order, serial number eighteen, is what is known in railroading as [fol. 57] a thirty-one order?

A. Yes, sir.

Q. That was what you sent to Mr. Jones at Orangeburg?

A. Yes, sir.

Q. Mr. Jones, the operator, should have made five copies of that order?

A. Yes, sir.

Q. One copy for his office as a record?

A. Yes, sir.

Q. And two copies to the crew of the first train that came in to Orangeburg?

A. Yes, sir.

Q. And two to the next one?

A. If the 723 had gotten there first, he would have given them to the conductor, and the conductor would in turn deliver it to the engineer.

Q. The conductor would sign for it?

A. Yes, sir.

Q. Would it be necessary for the operator, in clearing number 483, from your instructions, to hand to the crew of number 483 a clearance card?

A. He should hand him a copy of the order, with instructions to go to the other end of the passing track and wait.

Q. Now, what special or extra precaution was taken in this case?

A. The construction or wording of the order, notifying 483 that 723 would get that order at Orangeburg.

Q. That was the order you sent?

A. Yes, sir.

Q. Now, Mr. Rogers, when you told Mr. Tyson to give him a copy of the order, and the clearance card, and to tell him to go to the west end of the passing track and wait on number 723—did Mr. Tyson make any reply to that?

A. My answer is to go down to the west end of the pass track and wait on 723.

Q. Did Mr. Tyson make any reply to that?

A. He acknowledged it.

Q. Soon after that you were notified from Fort Motte that the disabled train, extra 683, had repaired the loco-
[fol. 58] motive and gotten under way?

A. Yes, sir.

Q. And then there was no further need for number 483 to proceed further?

A. No, sir.

Q. Then you notified Mr. Tyson to go in the passing track and get extra 483, and send it back to Branchville?

A. Yes, sir.

Q. And about that time the collision was reported?

A. Shortly afterwards, yes, sir.

Q. When train orders are addressed to the train and the operator, it usually means a five-copy order, or if more than two trains were concerned you could make seven copies?

A. Yes, sir, whatever is necessary.

Q. If it is not addressed to the operator, but to the train alone, that means three copies?

A. Yes, sir.

Q. And when only three copies are to be made—your signal is 31 on three?

A. Yes, sir.

Q. What does that mean?

A. A 31, copy three.

Q. The number eighteen sent to Orangeburg didn't contain that signal 31-three, but it read and operator?

A. Yes, sir.

Q. It read what?

A. It should have read 31, copy five.

Q. That means that Mr. Jones, the operator, should have made five copies of that order?

A. Yes, sir.

Q. What weather reports did you get that morning?

A. Very foggy.

Q. Mr. Witherspoon, your operator at Rowesville, when you placed the train order about the passenger train, said it was extra foggy that morning?

A. Yes, sir, I think he said it was very foggy, and we are guided by that advice, of course.

Q. About what hour did the collision occur?

A. About 9:30 or 9:35.

Q. The information as to the foggy condition came [fol. 59] when?

A. At 8:52 when the order was placed at Bowesville.

Q. State about the time that extra 483 passed the station at Orangeburg?

A. It was arriving at 9:25 as reported by the operator on the train sheet.

Q. Relative to the clearance which you authorized operator Tyson to give to the crew of 483 at Orangeburg,—what should Mr. Tyson have done?

A. He should have given the crew a copy of the order, which we term a middle order, and copy 603 and a clearance card and understanding.

Q. By passing, you mean where he was to stop?

A. He should have headed in the east end.

Q. Then go through?

A. Yes, sir, go through the track to the west end and await the arrival of 723.

Q. That form of clearance card referred to is the one that the operator should have used on that occasion?

A. Yes, sir.

Q. In other words, Mr. Tyson should have held the red board on him and caused him to stop, and then delivered to him two copies of the massage?

A. Of the train order, yes, sir.

Q. That train order is called a middle order?

A. It is a combined order, and it was a middle order.

Q. When you told the operator at Orangeburg to clear him to the west end of the track, you expected that he would stop him and communicate with him?

A. Absolutely, yes, sir. That was the only way that he could get all of the information.

Q. This particular order, supposing it was not addressed to the operator, was it the operator's duty to hold that order there and hold the board on the train and stop it?

A. Yes, sir.

Q. The order itself explained the conditions of the [fol. 60] rule number 208?

A. Yes, sir.

Q. In reference to clearance card, point out in the rule book a clearance card that is used for meet points?

A. The order board is at stop when the operator has any orders for him. A clearance card is used when a proceed signal is not given.

Q. When the board is red a clearance card should have been used?

A. Yes, sir.

Q. As a matter of fact, if there is an omission in the order, the operator should call your attention to it?

A. Yes, sir.

Q. Did anybody call your attention to the fact that the words "and operator" were omitted when the message was received?

A. No, sir.

Q. No operator on the line informed you that these words were omitted?

A. No, sir.

Cross-examination.

By Mr. Harley:

Q. This order, number eighteen that was in possession of Mr. Youngblood and Mr. Dantzler, and under which they proceeded to Orangeburg,—was it not their duty under all of the circumstances when they reached Orangeburg,—no matter whether it was a five copy order or seventeen copy order, and after the semaphore board was let down for them to have passed there,—was it not their duty to have gone into the siding or passing track at Orangeburg?

A. Yes, sir.

Q. Why?

A. Because they had an order that had not been fulfilled, superseded or annulled.

Q. That order, under that order extra train number 723 had the right of way to Orangeburg?

A. Yes, sir.

Q. When that train approached Orangeburg and the semaphore board was let down,—and it went by the station,—you could assume what, as to where it went?

[fol. 61] A. In the east end of the passing track to wait on train number 723.

Q. Suppose, instead of your office sending to Orangeburg a three copy order instead of a five copy order,—if it had been a five copy order and those copies would have been

deliverd to the engineer and conductor in this case, they would have been copies of the same order which they had, and which was given to them at Branchville?

A. Yes, sir.

Q. Copies of the same order on their person at the time?

A. Yes, sir.

Q. And irrespective of whether it was a five copy order or not, when that train reached Orangeburg, and that semaphore board was let down,—they should have gone into the side t-ack?

A. Yes, sir.

Q. Why?

A. Because they had orders which had not been fulfilled, superseded or annulled.

Q. You know what a semaphore is?

A. Yes, sir.

Q. You know where it is at Orangeburg?

A. Yes, sir, it is located there close to the telegraph office.

Q. And right at the depot?

A. Yes, sir.

Q. And controlled by the operator or whom?

A. It is controlled by the operator.

Q. Now, under that order, which Conductor Youngblood and Engineer Dantzler had at the time when they reached that semaphore board, no matter whether it was a five copy order or not,—when that board went down and gave them a right to proceed, where should they have proceeded to?

A. To the east end of the side track and go into the siding for extra number 723.

Q. Under the order which they had in their possession?

A. Yes, sir.

Q. Neither one of the gentlemen had any other order at the time?

A. No, sir.

[fol. 62] Q. These gentlemen had been working at Branchville there for some time?

A. Yes, sir, from nine o'clock the previous night until five o'clock that morning.

Q. Then how long had they been on duty for twenty-four hours prior to this accident?

A. They were off sufficient to clear the hours of service law, or they would not have been permitted to come on duty at nine o'clock the night previous.

Q. These gentlemen were located in Branchville for the purpose of doing certain switching if necessary?

A. Yes, sir, and other emergency line work.

Q. Taking care of disabled trains?

A. Yes, sir.

Q. They had lived in Branchville for some time?

A. Yes, sir.

Q. They had worked for the Southern for some time?

A. Yes, sir.

Q. They knew, Mr. Rogers, that when they received an order which said extra 483 to go to Orangeburg,—no matter whether it was east or west, they knew where Orangeburg was?

A. Yes, sir.

Q. This order that they had directed that they go to Orangeburg, and they knew that they were going to relieve a disabled train?

A. Yes, sir.

Q. That order said that they should meet extra number 723 at Orangeburg?

A. Yes, sir.

Q. When a semaphore is up,—they should be all of the time when agents are on duty?

A. Yes, sir.

Q. And when a train approaches a station and that semaphore goes down, it means what?

A. No further orders.

Q. Does it mean to a man who has orders to proceed on up the main line?

A. No, sir.

Q. It means what?

A. When it goes down it means that there are no further [fol. 63] orders for him at that station.

Q. And to do what?

A. Fulfill and carry out any orders that he had in his possession at that time.

Q. And he had this order in his possession, which had not been fulfilled, superseded, or annulled, to go into the siding at that point?

A. Yes, sir.

Q. So the other crew could come by?

A. Yes, sir.

Q. Instead, where did he go?
A. By his meeting point.
Q. Up the main line?
A. Yes, sir.
Q. And into this train?
A. Yes, sir.
Q. And that extra train number 723 had the right of way into Orangeburg, under this order?
A. Yes, sir, it did.
Q. And under the rules of the company?
A. Yes.
Q. Now, extra 723 was a superior train?
A. Yes, sir.
Q. By direction?
A. Yes, sir, and by class.
Q. These two trains were of the same class?
A. Yes, sir, they were both extra trains.
Q. Then without a special order, extra 723 was superior?
A. Yes, sir.
Q. Under the rules in effect?
A. Yes, sir.
Q. And by the time tables?
A. Yes, sir, and by the wording of the order.
Q. Now, as to rule number 88, which has been offered in evidence,—that rule reads as follows: "At meeting points between trains of the same class, the inferior train must clear the main track before the leaving time of the superior train. At meeting points between extra trains, the train in the inferior time table direction must take the siding unless otherwise provided." That was the rule when this accident happened at Orangeburg?
A. Yes, sir.
[fol. 64] Q. And outside of this order, number 18, which directed this train to stop at Orangeburg to let number 723 pass,—it was the duty of 483 to have stopped at Orangeburg and gone into the siding?
A. Yes. sir.
Q. That is, outside of the order that Mr. Youngblood and Mr. Dantzler had on their person?
A. Yes, sir.
Q. You say that with this order he had when he approached Orangeburg, and when this arm of the sema-

phore board went down (indicating to the witness), it was to proceed under his orders?

A. Yes, sir.

Q. And the order stipulated that he should go into the side track for the other train to come by?

A. Yes, sir.

Q. Now, to show that there were certain extra precautions within a few minutes after the order was issued, in order that extra number 483 should get to Fort Motte without interference, and to protect all trains, another order was issued, I believe?

A. Yes, sir.

Q. To what train was it directed?

A. To number 61.

Q. Read that.

A. It is order number 19, to Orangeburg, J. D., Extra 723 East and Operator, on a thirty-one,—to Operator Tyson,—sent at 8:22 A. M.,—Rowesville, number 61, from 19, Operator Witherspoon, completed at 8:22 A. M., and it says Extra 723 east get this order, meet number 61, engine 513, at Orangeburg instead of Rowesville.

Q. Why did you make the difference or the change?

A. The extra 723 had been sent out to meet at Rowesville originally, and being delayed we had to advance number 61 to Orangeburg to avoid a large delay.

Q. Where was 61 when the accident occurred?

A. At Orangeburg.

[fol. 65] Q. You know it was at Orangeburg?

A. Yes, sir, but I don't know at exactly what point. It was in one of the sidings, however.

Q. Now, these orders are to give information to the train people?

A. Yes, sir.

Q. To control movement of trains?

A. Yes, sir.

Q. This order number eighteen (18) was the only order that Mr. Youngblood and Mr. Dantzler had?

A. Yes, sir.

Q. That order directed them to meet this train, extra 723, at Orangeburg?

A. Yes, sir.

Q. If there had been several copies of the order, and extra copies delivered to them—it would have been copies of the same order that they had?

A. Yes, sir, the same order sent at the same time.

Q. Something giving them information that they already had in their pockets?

A. Yes, sir.

Q. If the agent had been on duty at St. Matthews, twelve miles west of Orangeburg, and if the order had been sent simultaneously to St. Matthews, and no matter whether it was a five copy order or not, and two copies had been given to the engineer and conductor of extra 723 at St. Matthews, would it have made any difference?

A. No, sir, not a bit.

Q. Why?

A. Because the order directed that 723 had a right to meet extra 483 at Orangeburg.

Q. It would not have changed the movement of the extra train number 723?

A. No, sir, not at all.

Q. The train, extra 723, reached St. Matthews at what time that morning?

A. At 8:18 A. M.

Q. And this order that was sent out of your office was sent at 7:58 A. M.?

A. Yes, sir.

Q. You knew at that time that that order was put out [fol. 66] that the agent at St. Matthews didn't go to work until eight o'clock in the morning?

A. Yes, sir.

Q. You knew that it would have made no difference if the engineer and conductor of number 723 had a copy of order or not?

A. No, sir, we would have had to have held the engine at Branchville until he got the signature of the extra 723, as we were restricting their route in doing that.

Q. In the event that an order, being transmitted from the dispatcher's office to one or more telegraphic stations, is wrong, or they take it down wrong—if it is delivered to the conductor or engineer, and it is inconsistent, haven't they got the right to refuse it?

A. Yes, sir.

Q. Is that in the rule book?

A. Yes, sir.

Q. What is that?

A. That is the second paragraph of rule number 201.

Q. That rule says that they must be brief and clear?

A. Yes, sir.

Q. Are there other rules on that?

A. Yes, sir, there is a general rule on it.

Q. Where is that?

A. In general notices in front of the book there is a special rule—which is the first one, and it says "safety is of the first importance in the discharge of duty."

Q. Are there more?

A. Yes, sir, there is another one on page six, paragraph B, which says "employees must be conversant with and obey the rules and special instructions. If in doubt as to their meaning, they must apply to proper authority for an explanation."

Q. Wasn't this order number eighteen plain and explicit?

A. Yes, sir, that is according to the prescribed form in the book.

[fol. 67] Redirect examination.

By Mr. Wolfe:-

Q. Now, an extra train is moved entirely by train orders?

A. Yes, sir.

Q. The schedule would not apply to them?

A. Only such special instructions as may be referred to in the rule book.

Q. But, now the special or extra trains—they are operated under the direction and authority of the train dispatchers?

A. Of the Chief Dispatcher.

Q. And he has his assistants, who are called train dispatchers?

A. Yes, sir.

Q. They give their orders to the operators?

A. Yes, sir.

Q. Out on the ground and at the stations?

A. Yes, sir.

Q. And the operators are under the train dispatchers?

A. Yes, sir.

Q. Now, turning to page 62—the clearance card—in respect to this particular train order or train movement—follow me and tell me what should have been written in the card—the printed part says "form 603, Southern Railway System,—and it is designated clearance card,—and on the first dotted line,—I presume that should have been filled out to read January 3rd, 1924?

A. Yes, sir, and the name of the station.

Q. It would be Orangeburg, January 3rd, 1924?

A. Yes, sir.

Q. And now on the second line,—after the words conductor and engineer,—following the word number on that line,—that ought to have been what?

A. Extra 483 west.

Q. Going to the next two lines on the clearance card,—where it says "Orders for your train are:"—nothing would go in the 19 column, but form 31, number 18 to go [fol. 68] in there, and on the next dotted line would supply information in respect to the order?

A. Yes, sir, but my information was not intended to convey any instructions to the crew, but it was for the information of the operator.

Q. On the next dotted line, the time of day ought to have been put on there?

A. Yes, sir.

Q. And then the next line down there should have been signed by the conductor?

A. Yes, sir, but it was not necessary under that order as it was the same order he had received at Branchville, but if he had gotten another order to meet another extra at St. Matthews, then you would be taking away something that he had, and you would get his signature to that.

Q. You would get his signature then?

A. Yes, sir, and on a 31 order you must get the conductor's signature, because you are taking away something that they have, and at Rowesville that morning we handed them a 19 order.

Q. Now, Mr. Rogers, Mr. Youngblood, the conductor, and Mr. Dantzler, the engineer, didn't have a clearance card, but they just had a copy of the message at Branchville?

A. Yes, sir, there is a copy of the 603 with the conductor's signature.

Q. Now this would be the clearance card?

A. Yes, sir.

Q. That should have been given?

A. Yes, sir.

Q. The train should have been stopped and given that clearance card and a copy of the message?

A. Yes, sir.

Q. And also a verbal message which would govern him in connection with that?

A. Yes, sir.

[fol. 69] Recross-examination.

By Mr. Harley:

Q. Orangeburg has yard limits?

A. Yes, sir.

Q. What is rule 93?

A. That says "within yard limits the main track may be used without protecting against second and inferior class trains. Second and inferior class and extra trains or engines must move within yard limits prepared to stop unless the main track is seen or known to be clear. When the view is obstructed additional precautions must be taken. In case of accident the responsibility will rest with the approaching train."

Q. Why was it that you wanted this train to go to the west end of the passing track on this occasion?

A. That he could be in position when the extra 723 reached there to get away as quickly as possible. There was no use for him to stop at the east end and back out or move out after 723 reached there. He would have had to have moved about a mile that way after the 723 arrived, and there was no use in that.

Q. Now, in connection with the rule number 93, which you have read to the jury,—at that time the time tables showed that the yard limit rule applied to Orangeburg?

A. Yes, sir.

Q. How can a written order be superseded?

A. By a train order.

Q. What kind?

A. A 31 train order.

Q. It must be a written order?

A. Yes, sir, on train order form.

Q. How can it be annulled?

A. By a train order form.

Q. By either a 31, 19, or written order?

A. Yes, sir.

Q. And then fulfilled after it is carried out?

A. Yes, sir.

[fol. 70] Q. This extra train number 483, under this order that they got at Branchville, was to go from Branchville to where?

A. To Andrews.

Q. Which is near Columbia?

A. Yes, sir.

Q. And it showed where it should stop for other trains to pass it along the route?

A. Yes, sir.

Redirect examination.

By Mr. Brown:

Q. Mr. Rogers, there is not any question about you having issued the five copy order to Operator Tyson at Orangeburg,—is there any question about that?

A. To Operator Jones.

Q. Jones received the message at Orangeburg just before eight o'clock then?

A. Yes, sir.

Q. It was Tyson's business to deliver it when the trains got there then?

A. Yes, sir.

Q. The order was issued by you, and under the rules, and under the practice of prudence and caution, it required a copy to be delivered to Youngblood and Dantzler, and that a clearance card be issued to them before they passed the semaphore board that morning?

A. The middle order required that.

Q. And if it be true that notwithstanding any orders, except the order which Youngblood had on his person, that he should have gone into the siding,—

A. Yes, sir, and he should have gone into it.

Q. But notwithstanding that,—if the additional middle order and the verbal instructions to go to the east end of the siding had been carried out by the operator Tyson,—

Youngblood and Dantzler would have been safe in the east end of the passing track at Orangeburg, would they not?

A. I don't know.

Q. What you mean to say is that you don't know that they would have obeyed the instructions?

A. If they would have forgotten the order that they [fol. 71] got at Branchville they would have forgotten the other one I would guess.

Q. If after having been on duty all night long, they had been called out in the fog on this morning,—they should have in reason have slipped the recollection of this message,—if at that time the semaphore board had been held on him, and this copy of the order given to them and a clearance card, and a verbal instruction also,—they would have been safe in the east end of the track at Orangeburg?

A. They might have.

Q. Whose duty was it to see that they got the middle order and the verbal instructions?

A. The operator at Orangeburg.

Q. That was Operator Tyson's duty?

A. Yes, sir.

Q. You issued the verbal instructions to put them in the east end of the passing track?

A. Yes, sir.

Q. That was Operator Tyson's duty?

A. Yes, sir.

Q. You issued the verbal instructions to put them in the east end of the passing track?

A. Yes, sir.

Q. You said that before they could pass that semaphore board they were entitled to a written clearance card, as is shown in here, authorizing them to go on and go into the passing track?

Yes, sir.

Q. They were entitled to a card like this number 603 on page 62 of the rule book?

A. To a clearance card, yes, sir.

Q. Now, was that done?

A. The evidence appears that it was not done.

Q. You say if there were no other instructions or further orders that it was their duty to go into the side track at Orangeburg, but there was further orders, and a general

precautionary middle order should have been put into their sleepy hands at Orangeburg, and verbal instructions given them by the operator on duty as to which end of the passing track to go into?

A. Yes, sir.

Q. Read that message now,—you said awhile ago that [fol. 72] this extra 723 was a superior train?

A. Yes, sir.

Q. Read that message then and tell what makes extra 723 a superior train?

A. It is superior under the rules which trains are handled by.

Q. You said though that extra 723 was a superior train under the rules, and under the wording of the order,—now tell us what in that roder would constitute a superior train, —point it out to us if you can.

A. We operate strictly under this rule book, and this rule book is the thing that makes the train orders.

Q. The contending parties in this case differ as to the construction of the rules making these extra trains,—that is, one superior over the other,—now, tell us if there is anything under the rules to show that extra 723 was a superior train and had the right to proceed over etxra train number 483, or if it had the right to force extra 483 into the side track,—that is, under the order there?

A. We cannot lay aside the rule book.

Q. You answer that question?

A. But you cannot lay aside the rule book I say.

Q. Now, tell the jury if you can find anything in the order which constitutes extra train 723 a superior train over extra number 483.

A. Before an employee is allowed to go out on the train or assume any responsibility he stands an examination as to the interpretations of the rule book, and these trains, I say, are run on the rule book.

Q. Why do you say, then, by the wording of the order that extra 723 was a superior train?

A. I can only tell you by the rules.

Q. There is nothing on that train order, number eighteen, to make extra 723 a superior train, except to go back on the rules and the time table?

A. There is nothing in that order in your hand, but to [fol. 73] a trained railroad man it is very plain.

Q. Now, you referred to rule number 201, the second paragraph, and to the rule on page 6 of the rule book, section B, which says that the train orders must be brief and clear,—and it refers to train orders absolutely there, does it not?

A. Yes, sir.

Q. Is there anything ambiguous about this order and that needs any explanation,—is it not perfectly clear?

A. I might say that the reason that rule was quoted is because the word east was used instead of the word west, and Mr. Youngblood being an old conductor should have taken notice of it.

Q. You said that extra 723 was to meet two trains at Orangeburg that morning?

A. Yes, sir.

Q. It was to meet number 61?

A. Yes, sir.

Q. It was on the side track there?

A. Yes, sir.

Q. And extra 483, which was coming from Branchville?

A. Yes, sir.

Q. And notwithstanding it is your duty to take every precaution to preserve the life of the employee of the Company, and the property of the railroad Company, and notwithstanding that no copy of the order was sent to St. Matthews for the information of the crew of extra 723, and to put extra 723 on notice so that it would not run into a train a couple of miles from Orangeburg.

A. When the order was put out at 7:58 A. M., the operator at St. Matthews was a little late, and I got him at 8:10, and I asked him if extra 723 was there, and he said he had not seen them, and about 8:20 he reported that they were coming in, and there would have been no necessity whatever to have put a copy of this order out at St. Matthews.

Q. Why did you give extra 483 a copy of the order seventeen miles from Orangeburg, and didn't give extra 723 a [fol. 74] copy?

A. Because extra 483 started from her original station and had to have some kind of order to move on.

Q. You talked with the operator at St. Matthews at what time?

A. 8:18 A. M.

Q. You didn't give him any order then as to extra 723, notwithstanding you knew that they were to meet 483 in twelve miles down there at Orangeburg?

A. I didn't give him the order, no sir.

H. C. Huggins, a witness on behalf of the plaintiff, sworn, testified as follows:

Direct examination.

By Mr. R. C. Holman:

I am 53 years of age, and have been engaged in railroad work most of my life. I served four and a half years in the machine shop as a machinist, and I have run on the road in all branches of the service about fifteen years. I operated all classes of trains on the Seaboard Air Line and on the Atlantic Coast Line and the Southern Railway. I have never had an accident, and I am familiar with the rules of the Southern Railway Company and the operation and signal of trains as an engineer. I know all about the semaphore board.

Q. Now, Mr. Huggins, I want to ask you this question,—I presume you are qualified as an expert,—when this extra train,—first, tell how extra trains are operated and run?

A. Extra trains are operated by train orders.

Q. Altogether?

A. Yes, sir.

Q. On the occasion we speak of of this wreck, Engineer Dantzler and Conductor Youngblood was operating an extra train, number 483, from Branchville to Andrews, and when they arrived at Orangeburg,—they were operating under order,—they reached Orangeburg, which is a station [fol. 75] open day and night, and blew four blasts of the whistle, and I want you to tell us what was their duty?

A. You would have to let me know the surroundings. I would have to see the order and all of the general conditions and all.

Q. They were operating under that order number thirty-one?

A. This is the train order book that the train dispatcher had in Charleston?

Q. Yes.

A. Yes, sir, well, this is the train dispatcher's book. The order that was sent ought to be like this one in the book.

Q. Have you read that order?

A. I told you to let me know the surrounding circumstances and conditions. I know the rules of the Southern Railway, and of the Seaboard Air Line Railway, and of the Coast Line road, and if you want me to testify I will have to tell what I know.

Q. You have read this order (indicating to witness)?

A. That is not the order. That is the train dispatcher's copy. The dispatcher writes this order in the book here for the information of the officials in Charleston, or wherever he may have been placed. That dispatcher that wrote there may not have sent that order. Another dispatcher may have come in the office and gone on duty, and then not put it in the book correctly.

Q. Suppose he is running on this order?

A. Absolutely as it is written there?

Q. Yes.

A. Then go ahead with the question you want to ask.

Q. Well, if he was proceeding under this order, when he got to Orangeburg, what was his duty?

A. To blow for the semaphore board.

Q. Then what?

A. That order was put out as a copy,—as a five copy [fol. 76] order,—for the purpose of exercising proper precautions, and the Superintendent or anybody else could not have dropped that board unless that order was given. He could let that man stop and give him his clearance card, and a copy of the order, and that was a five copy order, you understand, and it was placed there as an extra precaution, no doubt, and had they have done that, then that train could not have passed Orangeburg under any consideration.

Q. What effect would that white board have on him?

A. When I came to Orangeburg with a copy of the order in my pocket, and I would have known that the order was there, and I blew for the block, and the natural thing when he dropped that board was that he could not have given that order unless the order had been given to the other party. The dispatcher or Mr. King or anybody else would not have authority to drop that board and let that man by unless that order had been fulfilled or annulled or superseded. It was a mistake with the operator and that is all there is to it.

Q. When that board was dropped it gave him authority to go where?

A. To Andrews or wherever he was going.

Cross-examination.

By Mr. Harley:

Q. You were an engineer until what time?

A. Until 1909.

Q. Since that time you have lived in Orangeburg?

A. Yes, sir.

Q. You have not been employed by a railroad?

A. Not since then.

Q. That is, since 1909?

A. No, sir, but the rules are the same.

Q. You have been from place to place to testify in cases [fol. 77] like this one and others?

A. No, sir, this is the first time that I have ever testified, —that is, in this case.

Q. You were here on the other trial?

A. Yes, sir.

Q. Then you have testified before?

A. I mean this case is the first time I have testified.

Q. You have testified in other cases too?

A. Only one case in Orangeburg, and that is all. I have been here only once as I have told you.

Q. From that order, or what you see here,—that was a five copy order?

A. As it is written there.

Q. You don't know how it left the dispatcher's office, or anything about that?

A. No, sir, but if you will show me the order the man had on his body when he was killed, I can tell you something about it.

Q. That was a five copy order?

A. Yes, sir.

Q. By reason of being addressed to each train?

A. By that being a five copy order it should be two copies as additional precaution at Orangeburg for extra train 483.

Q. Being addressed to the train, there should have been five copies in Orangeburg instead of three?

A. According to that record there, yes, sir.

Q. And two copies should have been delivered to extra train 723 as it came into Orangeburg?

A. Yes, sir.

Q. And two copies to number 483 as it came in?

A. Yes, sir.

Q. And one copy to the office?

A. Yes, sir.

Q. That would make up the five copies of the order and how they were to be distributed?

A. That is correct, yes, sir.

Q. When that order, number eighteen went out, it directed Youngblood and Dantzler to meet extra train number 723 at Orangeburg?

A. Yes, sir, but I want to see the order that they were running under. Don't you know that I could not take that [fol. 78] thing that you have there and run a train with it?

Q. What about this?

A. That is the stuff.

Q. What does it say?

A. Engine 483 at Branchville. Engine 723 gets this order, meet extra 483 at Orangeburg. Engine 483 run extra Branchville to Andrews. Well, now to begin with, that order is written backwards. The first part is at the bottom and the bottom is at the top.

Q. You think it is written wrong?

A. No doubt about that.

Q. Now, I say that that order that they received at Branchville told them, or they received information sufficient to know that they were going to meet extra 723 at Orangeburg?

A. Yes, sir, but that could have been changed before they got to Orangeburg.

Q. How?

A. By annulling or superseding that order.

Q. But if that order had not been annulled or superseded, it was the duty of the two men to meet this train number 723 at Orangeburg?

A. Not after they got a clear board, no, sir.

Q. Why?

A. Nobody is better fitted to know where a train is and what it is doing than the dispatcher. Now, I am placing myself in the gentleman's position that was on the engine 483, getting that order at Branchville, and I am telling you what he had a right to do according to the train rule, and the order, and the conditions and everything surrounding the order.

Q. That being the only order that extra train 483 had that had not been superseded or annulled, don't you think that they should have done something for their own protection, and not passed by Orangeburg and gone on through on the main line?

A. Not after they got a clear board. That clear board [fol. 79] was an order or information to those gentlemen that the order had been changed or fulfilled or annulled, and for them to go on their route.

Q. What rule is that?

A. The first rule is common sense, and the next is what train has the right of way and all.

Q. You say then that outside of the rules that it is a question of common sense?

A. I said that was the first question.

Q. Do you mean to say that as a matter of common sense, that if you were a conductor that had an order delivered to you, and you had signed for it, to meet an eastbound train at Orangeburg, and that order, which was the only one you had that had not been superseded or annulled, and when you got within one hundred yards of the semaphore board it dropped,—that you would go right on,—do you mean to tell me that you would go right on?

A. Yes, sir, under the conditions.

Q. What conditions?

A. The situation is that the engineer on extra train number 483, east, did not have to have an order annulling that

train, or he would have annulled his running order. Now, anything can be done wrong, but I am talking about doing it justly and in accordance with the conditions and rules surrounding him, and the only way in the world to have pulled that board down,—everybody knows that that order could have been annulled without saying anything to extra 483, but they would signal extra 483 that it was annulled by dropping the board, and giving him a clear block, and letting him go on to his destination.

Q. Now, I ask you, Mr. Huggins, for the rule that you have testified from?

A. I don't know of any man that would run by a red board, but with that board dropping he was obliged to believe that the order had been annulled or something. If [fol. 80] his track was not clear he had no right to clear it by dropping that board. That is, the dispatcher had no right to do that.

Q. Now, when you drop that semaphore board,—what is that the sign of?

A. That he has no orders for you.

Q. Then to do what?

A. To proceed.

Q. On what?

A. On the running order that he had.

Q. That is when he dropped the semaphore?

A. Yes, sir, but to start off with I don't want to go into a long category now,—but to start off with, that is a lap order, and he had to pass the semaphore board to get to a man that had never gotten the order and get in the other fellow's territory before he could ever get in on the side track. You could not hold me or anybody else for going by a clear board. If he had information that the train had not arrived then he could protect himself with a flag, and go into the passing track.

Q. You do admit that when that board goes down that it is an order to proceed?

A. Yes, sir.

Q. And to proceed on the orders that he had?

A. With the conditions existing at that time,—

Q. The rule is that when that board goes down,—the rule is to proceed on the orders that he had?

A. It is an order to pass that board.

Q. And proceed on what he has?

A. That is an indication that he has no orders for him, and everything else that might affect him is dead.

Q. When that board drops it is an indication that he is to proceed on the orders that he has?

A. Yes, sir.

Q. No doubt about that?

A. No, sir.

Redirect examination.

By Mr. Wolfe:

I have had about fifteen years experience as an engineer. That covered service for the Seaboard Air Line Railroad, [fol. 81] and the Coast Line, and the Southern. Several railroads have rules that are similar. Some few technical parts are different, but they do not amount to anything. I was familiar with the rules of the Southern Railway Company that were put out in 1899, and I operated under those rules. The new rules were adopted in 1923, and although I have not been actively engaged in work as an engineer, I have kept up with those new rules and am familiar with them, and I had a copy of all of them in my office in Orangeburg. My experience as an engineer was in main line service, but I did run in the yard a day or two sometime. These rules are main line service rules.

Q. Now, this order that you have read in the book, and the copy which was shown to you, is what is known as a middle or meet order?

A. The one in the dispatcher's book is, but this one I have here is not. That is not an exact duplicate of the other one you will notice.

Q. This order written in the dispatcher's book and the copy found on Mr. Youngblood is a combination meet order and special order?

A. Yes, sir.

Q. It directs engine 483 to run extra from Branchville to Andrews?

A. Yes, sir.

Q. That part is a running order?

A. Yes, sir.

Q. And if train number 683, which was at Fort Motte, had not gotten started again, then the engine 483 would run on to Fort Motte?

A. Yes, sir.

Q. When the conductor and engineer received this order at Branchville, it was their duty to depart from Branchville in pursuance of the order?

A. Yes, sir, but I don't know much about Branchville. They should have had a clearance card in addition to that order.

Q. Read that and see if that is not a clearance card?

A. Yes, sir.

[fol. 82] Q. Given to them at Branchville by operator Von Lehe?

A. It is a copy that should have been given them at Branchville.

Q. That has been put in evidence?

A. Yes, sir, he should have gone with that order, and under the clearance card he could leave.

Q. He could leave Branchville?

A. Yes, sir.

Q. And proceed westward on his trip?

A. Yes, sir.

Q. You are familiar with the Orangeburg station?

A. Yes, sir.

Q. They have a semaphore board there?

A. Yes, sir.

Q. You know where it is located?

A. Yes, sir, I know where it is.

Q. And normally that semaphore board stands out red with the arms out this way (indicating to the witness)?

A. Yes, sir.

Q. And then train 483 could not go by that semaphore board?

A. Not until it is made white.

Q. That is by dropping the arm?

A. Yes, sir.

Q. When the engineer on train number 483 approached Orangeburg,—what was his duty?

A. To blow for the block.

Q. To give four blasts with his whistle then?

A. Yes, sir.

Q. Now, if the dispatcher in Charleston had sent, and his operator at Orangeburg had received that order, addressed "and operator,"—it would have been a five copy order?

A. Yes, sir.

Q. There should have been five copies in the office at Orangeburg?

A. Yes, sir.

Q. One for the files of the office?

A. Yes, sir.

Q. And two copies for extra 723?

A. Yes, sir, when it got there.

[fol. 83] Q. And two for who else?

A. There was supposed to be two copies there if it was filed for extra 723 and two copies as an extra precautionary measure for extra number 483, and one copy for the files of the office.

Q. If that had been done properly,—when the engineer blew the four blasts of the whistle, what should the operator in Orangeburg have done?

A. From the evidence that I have heard the operator should have gone out there with the two copies of the order, and if he wanted him to pull down to theother end of the passing track, then he ought to give him a clearance card, and hold it red and then he could have pulled down to the other end. He would have had to have stopped him and he couldn't do it on the fly.

Q. The proper way under that order to have handled the train was to hold that flag red, and then go out, and said these people have not come, and you go in the other end of the siding there and wait?

A. Yes, sir.

Q. As Mr. Rogers has stated?

A. Yes, sir.

Q. Mr. Rogers stated it correctly?

A. I think so, yes, sir.

Q. Mr. Harley asked you if when the board was dropped that was done to show him the rule in the book that would apply,—that is, the rule that indicated as to what should have been done?

A. Yes, sir, that is at the top of page six. And that bottom is the clear board for the man going west or north, or whichever they might term it. That is the board before

the man blew for it, and when he blew for it it dropped down like this (indicating to counsel).

Q. Now, if the operator did no more than drop the board, and you were running the engine,—what would you have done, Mr. Huggins?

A. I would have proceeded on the ground that the only [fol. 84] way that the dispatcher or operator could have dropped that board was to have the other train in there.

Q. Under the circumstances as you have heard them,—if you had run in there ought that board have been dropped from red down to white when he blew the four blasts to go on and get in the pass track?

A. No, sir, the minute he dropped that board he lapped number 483 into the territory of number 723.

Q. Ought he to have given him a clearance card of a similar kind under the rule to the one that was given by Operator Von Lehe at Branchville?

A. If he had delivered that order he would have given him a clearance card, and sent him to the west side end, but that would have lapped into the other man's territory. It was necessary before he was sent on in to the other territory to protect number 723 that had no notice of him.

Q. In that event, extra 723 should have been protected?

A. Yes, sir, they would have no notice of him.

T. E. Jones, a witness for the plaintiff, sworn, testified as follows:

Direct examination.

By Mr. Wolfe:

Q. You didn't testify before in the trial of this case?

A. No, sir.

Q. You were the operator at Orangeburg on the morning of January 3rd, 1924?

A. Yes, sir.

Q. Preceding Mr. Tyson?

A. Yes, sir.

Q. When did you go off duty?

A. A few minutes after eight or about eight o'clock.

Q. This train order number eighteen sent by the dispatcher in Charleston,—did you receive that at Orangeburg?

A. Yes, sir.

Q. When you were on duty?

A. Yes, sir.

[fol. 85] Q. How many copies did you make of it?

A. Three copies.

Q. Tell whether or not when that order was sent to you it had the words "and operator" in it?

A. I didn't get it that way.

Q. Consequently you only made three copies of it?

A. Yes, sir.

Q. You didn't get the order as a five copy order?

A. No, sir, as three copies, and I made three.

Cross-examination.

By Mr. Harley:

Q. You only made three copies, Mr. Jones?

A. Yes, sir.

Q. Then Mr. Tyson succeeded you?

A. Yes, sir.

Q. You turned this over to Mr. Tyson?

A. Yes, sir.

Q. At Orangeburg, the passing track is west of the passenger depot, is it not?

A. Yes, sir.

Q. About how far west?

A. About seventy-five yards.

Q. You have at that depot a semaphore board?

A. Yes, sir.

Q. One coming into Orangeburg should stop before they get to the semaphore board if it is down with red on it?

A. Not necessarily.

Q. You have to clear them before they can leave?

A. Yes, sir.

Q. You were not on duty when this train came in?

A. No, sir.

Q. Mr. Tyson was on duty?

A. Yes, sir.

Q. And that part of it you know nothing about?

A. No, sir.

J. A. TYSON, JR., a witness for the plainitff, sworn, testified as follows:

[fol. 86] Direct examination.

By Mr. Wolfe:

I live in Orangeburg, and am thirty years of age. My business is depot agent and operator at Orangeburg, and I was there as operator in January, 1924. That office stays open for twenty-four hours and has three operators. On the morning of the wreck I went on duty at eight o'clock, relieving Mr. Jones. At that time Mr. Rogers was the dispatcher in Charleston, and he was on duty when I went on duty.

Q. Did Mr. Jones turn over any orders to you?
A. Yes, sir.
Q. Did he turn over order number 18 to you?
A. Yes, sir, he did.
Q. And several others?
A. One other I think.
Q. Did you read the two orders that Mr. Jones turned over to you that morning?
A. Yes, sir.
Q. How long after you went on duty before you read them?
A. Fifteen or twenty minutes.
Q. Did this order number eighteen have the words "and operator" in the address?
A. No, sir.
Q. How many copies did Mr. Jones turn over to you?
A. Three.
Q. You had one on file?
A. I didn't file it until after it was delivered.
Q. What did you do with the other two?
A. I was going to give them to extra train number 723.
Q. One to the engineer and one to the conductor of extra train 723?
A. Yes, sir, I would have had the conductor sign as a 31 order.
Q. The conductor would have delivered one to the engineer?
A. Yes, sir.

Q. 723 did not ever arrive?

A. No, sir.

Q. Passenger train number twelve, what time did it pass?

A. 9:01 A. M.

[fol. 87] Q. Did that come in about on time?

A. Yes, sir, about on time.

Q. Then it proceeded towards Charleston?

A. Yes, sir,

Q. It was coming from Columbia?

A. Yes, sir.

Q. You also had a train order from the dispatcher in Charleston for train number 483 to go into the packing house switch by the fair grounds, and let train number twelve go by?

A. I had that order for the passenger train.

Q. That passed there?

A. Yes, sir.

Q. And there was no trouble there?

A. No, sir.

Q. Then 483 came on?

A. Yes, sir.

Q. The packing house track is about a half a mile east of Orangeburg, isn't it?

A. Yes, sir.

Q. When you saw extra 483 coming, what did you do?

A. I told the dispatcher that he was coming.

Q. What did the dispatcher tell you?

A. To clear him and let him go to the west end of the passing track.

Q. The west end is not quite a mile from the station?

A. No, sir.

Q. Then there is a number of commercial tracks around the depot there?

A. Yes, sir.

Q. They are house tracks?

A. Yes, sir, for commercial purposes.

Q. Now, you had only two copies of the thirty-one (31) train order which Mr. Jones gave you?

A. Yes, sir.

Q. That was order number 18?

A. Yes, sir.

Q. You had no copy for the crew of extra train No. 483?

A. No, sir.

Q. The words "and operator" signify five copies of an order, I believe?

A. Yes, sir, that is what it means.

[fol. 88] Q. And the order turned over to you was not addressed "and operator"?

A. No, sir.

Q. Extra train number 483.—when it was coming up, the semaphore was at normal position?

A. Yes, sir.

Q. It was red on number 483?

A. Yes, sir.

Q. That was the position of the semaphore board when number 483 came in?

A. Yes, sir.

Q. And when you called the dispatcher?

A. Yes, sir.

Q. Did you see any of the crew on number 483 when they came up to the station?

A. I don't remember.

Q. They blew the customary four blasts of the whistle as they approached the board?

A. Yes, sir.

Q. You had just talked with Mr. Rogers in Charleston?

A. I told him he was coming in.

Q. You told Mr. Rogers that extra 483 was coming in?

A. Yes, sir.

Q. Where was number 61?

A. I think it was in the lumber yards, but I don't know exactly where it was then.

Q. It was in the Orangeburg yards somewhere?

A. Yes, sir.

Q. Where was the body of the train?

A. Up on the passing track somewhere.

Q. Now, when the engineer on extra 483 blew the four blasts for the board you dropped the red board down?

A. Yes, sir.

Q. The one that was next to him?

A. Yes, sir.

Q. And 483 went on by?

A. Yes, sir.

Q. You didn't have any copy of the meet order for that crew?

A. No, sir.

Q. You had read that order?

A. Yes, sir.

Q. It was a meet order?

A. Yes, sir.

[fol. 89] Q. And sometimes called a middle order?

A. Yes, sir.

Q. I believe you said that as you did not have five copies of it you did not treat it as a middle order?

A. Yes, sir, and as it was not addressed to the operator.

Q. It should have been addressed to the operator too?

A. Yes, sir.

Q. So you did not have two copies of the order for the crew of extra 483?

A. No, sir.

Q. Did you give 483 a clearance card?

A. I gave him the board to proceed.

Q. All you did after you talked to the dispatcher was to drop the board?

A. Yes, sir.

Q. You didn't give him a clearance card as provided in form 603 in the rule book?

A. No, sir, I did not.

Q. You gave him the board and let him proceed?

A. Yes, sir.

Q. Did you give him the instructions that Charleston had given to you?

A. He didn't tell me to tell him.

Q. An order like that number eighteen, is subject at any time to being changed or superseded?

A. Yes, sir.

Q. And the dispatcher at Charleston is the only man that can do that?

A. Yes, sir.

Q. The dispatcher at Charleston office controls the movement of extra trains?

A. Yes, sir, by train orders.

Q. They are run by train orders?

A. Yes, sir.

Q. And he can control a scheduled train?

A. Yes, sir.

Q. The dispatcher at Charleston who had control handled this train through the various operations along the line?

A. Yes, sir.

Q. You were one of the operators at Orangeburg?

A. Yes, sir.

[fol. 90] Q. Train number 723, coming in the opposite direction, had not yet gotten the order?

A. No, sir.

Q. Mr. Tyson, it was very foggy that morning, was it not?

A. Yes, sir, it was.

Q. If you had had two copies of the 31 order,—number 18, for train number 483, and it had been addressed to the operator, you would have had five copies of it, and you would have held the board on extra train number 483, and delivered to train 483 two copies of the order in question?

A. Yes, sir.

Q. If it had been addressed to the operator?

A. Yes, sir.

Q. Then, in addition to that, you would have had to have given him a clearance card?

A. Yes, sir.

Q. As prescribed in form 603?

A. That is correct.

Q. The train master at Charleston, Mr. Walker, was up there that morning?

A. Yes, sir.

Q. He was there in Orangeburg?

A. I think he was somewhere around there.

Q. He travels around, doesn't he?

A. Yes, sir.

Q. His office is in Charleston?

A. Yes, sir.

Q. He has charge of all of the train crews?

A. Yes, sir.

Q. And is the superior officer over the train crew?

A. Yes, sir.

Q. He was around there?

A. Yes, sir, somewhere I think.

Cross-examination.

By Mr. Harley:

Q. Trains under the rules of the Company are only run by written orders?

A. Extra trains by written train orders.

Q. That is the rule of the Company?

A. Yes, sir.

Q. They are not run by verbal orders?

A. No, sir.

[fol. 91] Q. You succeeded Mr. Jones that morning?

A. Yes, sir, I did.

Q. You are agent there now?

A. Agent operator.

Q. You received that message that the gentlemen in Branchville received?

A. Yes, sir, Mr. Jones did.

Q. He turned it over to you?

A. Yes, sir.

Q. That was number eighteen?

A. That was the number of the order.

Q. And it was known as a thirty-one order?

A. Yes, sir.

Q. How long have you been in Orangeburg?

A. I have only worked at that job since 1922.

Q. What are you doing now?

A. Still at Orangeburg on the same job.

Q. That order that you got was that extra 723 should meet extra 483 at Orangeburg?

A. Yes, sir.

Q. Was that the only order you had affecting the movement of extra train number 483?

A. Yes, sir.

Q. What other train was there?

A. Number 61, known as our local freight.

Q. Where was it?

A. In the yard there somewhere.

Q. Working?

A. Yes, sir, the engine was and the cars were there on the passing track somewhere.

Q. When extra 483 approached Orangeburg, did it give any signals at all?

A. It gave four blasts of the whistle.
Q. As it approached the station?
A. Yes, sir.
Q. How far from that depot and semaphore were they?
A. Something like one hundred yards.
Q. When it gave four blasts of the whistle what did you do?
A. I pulled the board.
Q. To do what?
A. Proceed.
Q. When it came up what was the position of your [fol. 92] board?
A. It was red.
Q. And extended out like this (indicating to the witness)?
A. Yes, sir.
Q. And that means what?
A. You have orders to stop.
Q. Then you did what?
A. I pulled the board.
Q. When you pulled that board did you know that he had a meet order there at Orangeburg?
A. Yes, sir.
Q. When you pulled the board what did he do?
A. Pulled on by my station.
Q. He went by the board then?
A. Yes, sir.
Q. Where did you think he was going?
A. Up in the passing track.
Q. When you pulled that board down to proceed,—what did that mean?
A. That I had no further orders for him and to proceed.
Q. On what?
A. On the order that he had.
Q. That was to proceed, and that you had no further orders for him at that station?
A. Yes, sir, that I had no further orders for him.
Q. And to proceed on the orders that he had?
A. Yes, sir.
Q. You knew what orders he had?
A. Yes, sir.
Q. What were they?

A. To meet extra 723 at Orangeburg.
Q. Go in where?
A. Go in the passing track and meet extra 723.
Q. At Orangeburg?
A. Yes, sir.
Q. He was to do that under the order which he already had?
A. Yes, sir.
Q. Was your attention called to the approach of that train at Orangeburg?
A. Only by the blast of that whistle.
Q. Under that order, when you let that board down, he [fol. 93] was to proceed on the orders that he had?
A. Yes, sir.
Q. That train was to meet 723 there?
A. Yes, sir.
Q. And it was coming from towards Columbia and St. Matthews?
A. Extra 723 was.
Q. Then you had two copies of the order for what train?
A. For 723 east.
Q. When it reached there?
A. Yes, sir.
Q. What became of 483?
A. Instead of stopping at Orangeburg it continued on.
Q. Right on by the station?
A. Past Orangeburg, yes, sir.
Q. And this wreck occurred later?
A. Yes, sir.

G. K. Fickling, a witness for the plaintiff, sworn, testified as follows:

Direct examination.

By Mr. Wolfe:

I live in Blackville, and until recently I was locomotive fireman, and had stood part of the examination as an engineer, but never had acted on an engine by myself. I had three or four years of service, and worked on the Southern Railway, Columbia Division.

Q. You know what a thirty-one order is?

A. Yes, sir, I think so.

Q. A thirty-one train order?

A. Yes, sir.

Q. When there is a meet order or pass order out, Mr. Fickling, and the engine approaches the meeting point, the semaphore board stands out with the arms in this position, —that is the normal position?

A. Yes, sir.

Q. Both sides are red?

A. Yes, sir, it is red always. If it is a question, and you have to get a clearance card to pass, then you have to get one, and it stands out, and if you don't have to get a clearance card the board must be given white before the train can pass.

[fol. 94] Q. Orangeburg has a semaphore board?

A. Yes, sir.

Q. And a day and night office there?

A. Yes, sir.

Q. Now, when a train approaches that semaphore what must the engineer do?

A. If he finds a red board he gives four blasts of the whistle, which asks for an order to pass, and that would be a white board.

Q. To pass he would be given a white board?

A. Yes, sir.

Q. It is white when it drops?

A. Yes, sir.

Q. Now, I believe the engineer acknowledges that signal?

A. When it is dropped, yes, sir.

Q. How does he answer that?

A. He answers it with two blasts of the whistle.

Q. When the board drops that way (indicating to the witness), what is the sign of that?

A. I think that I am familiar with the rule book, but I cannot point them out to you now. I will have to see the book and find the rule.

Q. You were required to have a rule book?

A. Yes, sir, I was.

Q. And you worked for the Company between three and four years you state?

A. Yes, sir.

Q. When the four blasts of the whistle were given, and the board drops, and drops from red to white,—what is the indication?

A. To proceed.

Q. What is the name of that when it is dropped?

A. They call it a clear board.

Q. That means what?

A. Proceed on the orders that you have.

Q. Now, you know what a meet order or middle order is?

A. Yes, sir.

Q. A number thirty-one order is sent out in five copies.

A. Yes, sir.

[fol. 95] Q. One copy for the files, and two copies for each of the trains that are going to pass?

A. Yes, sir.

Q. Then should that board be dropped and no copies of the order given to the train as it approaches?

A. No, sir.

Q. Why?

A. A thirty-one order requires the signature of the trainmen, and it must be kept red,—that is the board is kept red, and you have to stop and sign for it.

Q. That board is kept red until the conductor furnishes his signature?

A. Yes, sir.

Q. But when the board is dropped the indication is what?

A. That they have no order for them.

Q. Then he would follow his previous running orders?

A. Yes, sir, that is my judgment.

Q. You know the location of the track at Orangeburg?

A. I have seen them.

Q. The passing track does not run on both sides of the semaphore board?

A. No, sir.

Q. It is on the west side of the station?

A. Below the station, west, yes, sir.

Q. How far?

A. About one hundred and fifty feet, I would say.

Q. Then it extends for nearly a mile up towards Columbia?

A. A passing track?

Q. Yes.

A. Yes, sir, something like that.

Q. Now, with a pass track located or fixed like that,—not on both sides of the semaphore board, but starting one hundred and fifty feet on the other side of the semaphore or station,—state whether or not in your opinion that is a safe place to handle trains?

A. I would not think it was safe if you had a meet order with another train and to go back in his territory.

Q. You have examined at Orangeburg the tracks and con- [fol. 96] ditions there?

A. Yes, sir.

Q. In order to effect a passing there, a train going from Charleston and going west, has to pass the station to get into the passing track?

A. Yes, sir.

Q. And then he goes into the other man's territory?

A. Yes, sir, if he has a meet order he has to pass beyond this board into the other man's territory.

Q. Now, speaking in railroad terms or parlance,—that semaphore board is Orangeburg?

A. Yes, sir, that is the limit that any train would have coming in to Orangeburg.

Q. When you pass that either way you have gone by the station of Orangeburg?

A. Yes, sir, as far as train orders are concerned because they have passed that board.

Q. Now, a train going up from Branchville and going west by there,—he would have to pass that semaphore?

A. Yes, sir.

Q. There is only one track in front of the station there?

A. Yes, sir.

Q. In order to pass another train, or go by and get in the pass track,—you would have to go by the semaphore board?

A. Yes, sir.

Q. Is that a safe arrangement in your opinion?

A. No, sir, not in my opinion it would not be.

Cross-examination.

By Mr. Blatt:

Q. All extra trains are operated under train orders?

A. Yes, sir.

Q. The only way that extra 483 could have been operated was by train order?

A. Yes, sir.

Q. The only way it could have been operated was by a written train order?

A. Yes, sir.

Q. And any men who have been in the railroad business [fol. 97] as long as these men,—have to stand examination upon the rules that we have mentioned?

A. Yes, sir.

Q. And those rules provide that the only way an extra train can be operated is by a written train order?

A. Yes, sir.

Q. A verbal order would have no effect?

A. No, sir.

Q. It makes no difference who would give them, a verbal order itself is not binding?

A. No, sir, if they had a written train order their duty was to comply with it.

Q. If Captain Youngblood left Branchville with this train order in writing,—he was to meet extra 723 at Orangeburg?

A. Yes, sir.

Q. Not having received another train order superseding or annulling that order, was it not his duty to go into the siding at Orangeburg and wait on extra 723?

A. Yes, sir.

Q. I will ask you again,—if Conductor Youngblood left Branchville with an extra train known as extra number 483, with a written order in his pocket advising him to meet another extra train at Orangeburg, and not having received in the meantime another written order superseding or annulling the order he had, if he passed on by the station at Orangeburg, would you say that he complied with his written order?

A. If nothing else conflicted with it he should have met him there.

Q. The only way to operate an extra train is by a written train order?

A. Yes, sir.

Q. If he had no other train order in writing he should have been there?

A. Yes, sir.

Q. On approaching Orangeburg,—you would give four blasts of the whistle?

A. Yes, sir.

[fol. 98] Q. The operator on duty answered by holding the semaphore or letting it drop?

A. Yes, sir.

Q. It has been testified to that extra 723 was a superior train and extra 483 was an inferior train,—which one would go into the siding?

A. The inferior train.

Q. If Captain Youngblood had in his possession a written train order, directing that he should meet a superior train at Orangeburg, wasn't it his duty upon reaching Orangeburg to go into a siding and wait on extra 723?

A. If he could find one to get in, yes, sir.

Q. And there was one there a mile long?

A. Yes, sir.

Q. When the semaphore board is dropped, that is an indication that the station had no further train order?

A. Yes, sir.

Q. And that the conductor and the engineer should comply with the order that they had?

A. Yes, sir.

Redirect examination.

By Mr. Brown:

Q. If you were in Youngblood's place, with Dantzler running a train from Branchville to Fort Motte, and if a thirty-one, five copy order had been issued to direct the operation of your train, and the operation of train 723 in the opposite direction, directing you to run to Fort Motte, but in the meantime to meet number 723 at Orangeburg, and if you approached the station at Orangeburg, you, by four blasts of the whistle, called for the orders that ought to have been there for you, and if the operator failed and refused to give you those orders, but on the contrary gave you the white board, which indicates clear signal or clear track, and if by reason of another train standing there in the side track, you had reason to believe that the meet order had been fulfilled,—what would you have done if you [fol. 99] had been in Youngblood's place, with a white board and high ball sign given to you?

A. That would not be any proof, but it would be an indication that the train was there, and to go on and clear. There is not a rule that gives you a right to pass there without seeing the number on the engine, but that is done a lot of times if an engine is seen in the side track.

Q. And if the operator signals you that the track was clear, what would you do?

A. I would think it was clear, but it would depend on what kind of order the other fellow had. You would no doubt believe that that was the 723 engine in the track, and that they were giving you the white board to proceed.

Q. In railroad circles, if they had held that red board on Youngblood he would have been there until yet unless he got additional orders?

A. Yes, sir, he would have to stay there, but when that board dropped this way (indicating to counsel) it had no effect on him, and he could pass on by.

Cross-examination.

By Mr. Blatt:

Q. Under the reasoning Mr. Brown has given you, you say a man would have a right to presume that that engine on the siding was number 723?

A. Yes, sir, they could have stopped and found out, and it is against the rules, but they lots of times see an engine in there and go on.

Redirect examination.

By Mr. Brown:

Q. There was a fog so thick you couldn't see anything,—who was at fault,—if they were going to direct Youngblood to pass that semaphore board when it was red,—they would have had to have given him a clearance card?

A. Yes, sir, they would have had to have given him an [fol. 100] order to come by, or he would have been there until yet.

Q. They had to give him the clear board and let him by, or he would have been there until yet?

A. Yes, sir.

Plaintiff Rests

Testimony on Behalf of the Defendants

C. T. CANADY, a witness for the defendants, sworn, testified as follows:

Direct examination.

By Mr. Harley:

I was conductor on this train of the Southern Railway Company, known as number 683. That was the train that became disabled at Fort Motte. This is my original record showing the contents of that train. That train left from Charleston at 11:45 P. M. on the 2nd of January, 1924, the night before this wreck, and it got to Andrews at 11:15 A. M. on the third of January, 1924, the morning of the wreck in question. I was told that this extra train 483 was a train that went to help my train. Train number 683 had forty-eight cars. There were twenty-four interstate cars in that train. We had a car load of iron going from Charleston to Chattanooga, Tennessee, and a carload of merchandise from Charleston going to Birmingham, Alabama, and a car going to Memphis, Tennessee, out of Charleston. We had twenty four cars in that train that belonged to this State, and twenty-four cars, all told, that were going from points in South Carolina to points in other States.

(No cross-examination.)

Mr. Harley: I offer this statement, which is a copy from his original book showing the contents of the cars. The [fol. 101] statement is offered in evidence on behalf of the defendants.

C. B. ERGLE, a witness for the defendants, sworn, testified as follows:

Direct examination.

By Mr. Harley:

I am a Yard Clerk, and I have the original records showing the contents of extra train number 723. That train was made up at Andrews Yard in Columbia and was going to Charleston on January 3rd, 1924. That train had sev-

enty-one cars and consisted of interstate and intrastate freight. There were twenty-two interstate cars with merchandise in that train, and forty-nine intrastate cars.

(No cross-examination.)

Mr. Harley: We offer this book in evidence containing the record which the witness has referred to, but ask permission to take it back again.

E. G. KITTLES, a witness for the defendants, sworn, testified as follows:

Direct examination.

By Mr. Harley:

I am at present Resident Engineer at Andrews Yard for the Southern Railway Company. I have been a civil engineer for the Company twelve years, and until the first of January I made measurements and surveys for the Company. I am now on the special Andrews Yard work.

Q. What is that?
A. Blue print of the Orangeburg yard.
Q. And also another one?
[fol. 102] A. Yes, sir, one at Stilton.
Q. This is the one of Orangeburg and this is the one of Stilton?
A. Yes, sir.
Q. Did you make that?
A. Yes, sir, I did.
Q. Take the Orangeburg blue print,—what is that?
A. All of the tracks and right of way and all of the buildings within one hundred feet of the right of way from the ground on the right of way to the west end of the passing track at the depot.
Q. How far is it from the depot and semaphore board to the fair grounds?
A. To the packing house spur?
Q. Yes?
A. That is 4474 feet.
Q. To the switch at the packing house spur?
A. Yes, sir.

Q. And that is at the fair grounds?

A. Yes, sir.

Q. What other crossings are there after you leave the packing house spur before you get to the depot?

A. I have several industrial tracks shown in there.

Q. Name them.

A. We have two tracks serving the Orangeburg Fertilizer Company, or they were serving them at that time, and some of them have changed contracts since then, and they serve other Companies now.

Q. What others?

A. And we have one in there serving W. S. Barton and J. W. Sherriff.

Q. And others also?

A. Yes, sir.

Q. This is the Branchville side of the Southern railway track or station?

A. Yes, sir.

Q. This is the passenger depot (indicating to witness)?

A. Yes, sir, this is the passenger depot.

Q. What street is that?

A. That is Russell Street.

Q. That goes up into the business part of town?

[fol. 103] A. Yes, sir.

Q. What is that?

A. Whitman Street.

Q. What is that?

A. Glover Street.

Q. And that?

A. That is Sellers Avenue.

Q. They are all marked plainly on your map?

A. Yes, sir.

Q. What spurs are between Russell Street and the Fair Grounds?

A. Those that I have mentioned, and the tracks that serve the cotton mill in connection with the Coast Line, and then one is in here (indicating), that is serving Adden Brothers.

Q. Where is the semaphore?

A. It is in the center of this office here.

Q. With the bay window?

A. Yes, sir.

Q. How far is that semaphore board and bay window from Russell Street up here?

A. About one hundred and fifty feet.

Q. The train coming this way (indicating), would cross Russell Street before it hits the depot and the semaphore?

A. Yes, sir.

Q. Where is that passing track?

A. The east end is here (indicating on map).

Q. How far is that end?

A. It is 232 feet from the semaphore to the east end of the passing track.

Q. That is how many yards?

A. Seventy-five yards.

Q. Where does that passing track end?

A. Right here.

Q. How long is it?

A. It is 4172 feet long, and it will hold a total of eighty-six cars in the clear.

Q. What else do you have on there?

A. A spur track to the automobile platform, and a house track that serves the freight depot and these other warehouses, and then there is another spur track on Amelia [fol. 104] Street that serves some warehouse, and this one to the Home Fertilizer Company.

Q. How far is it from the semaphore to Stilton?

A. To the south end of the switch at Stilton it is two and 54-100 miles. I call it the south switch there, but it is the east switch in reality.

Q. Is that east switch where the wreck occurred?

A. No, sir, it was beyond the west switch.

Q. Have you a record showing how far it is from the point of the wreck to the semaphore board at Orangeburg?

A. It is 19,020 feet.

Q. That is how far?

A. That is three and six-tenths miles.

Q. What is that (indicating)?

A. A map of Stilton that shows the passing track and where the accident occurred relative to that passing track at Stilton.

Q. Where did the accident occur?

A. Here (indicating to counsel.)

Q. Which way is Orangeburg?

A. Down here.

Q. Are there any houses at Stilton?

A. Just a few little warehouses.

Q. What else?

A. A little passenger shed.

Q. Where the wreck occurred was beyond the passing track?

A. It was 3478 feet west of the west end of the passing track, and that is 66-100 of a mile.

Cross-examination.

By Mr. Holman:

Q. Here is the semaphore board?

A. Yes, sir.

Q. And it is a considerable bend in there?

A. Yes, sir.

Q. You could not see a train coming around there from here (indicating to witness on diagram)?

A. No, sir.

Q. It is a crook in there?

A. Yes, sir.

[fol. 105] Q. All of these are industrial tracks?

A. Yes, sir.

Q. And this is the main track?

A. Yes, sir.

Q. And next to that is the passing track?

A. Yes, sir.

Q. And then what?

A. The house track.

Redirect examination.

By Mr. Harley:

Q. How far is the track straight before you reach the place of the accident?

A. It is a straight track going from Orangeburg to Stilton of three and two-tenths miles.

Mr. Harley: I offer these two diagrams in evidence, if the Court please.

H. W. Von Lehe, a witness for the defendants, sworn, testified as follows:

Direct examination.

By Mr. Harley:

In January, 1924, I was first trick operator at Branchville for the Southern Railway Company. We had three

operators there and each one worked eight hours. My hours were from eight in the morning until four in the afternoon. I knew Captain Youngblood and Mr. Dantzler. They ran a switch engine at Branchville. Mr. Witherspoon was the fireman. Mr. Dantzler was the engineer and Mr. Youngblood the conductor. At the time of this wreck they had lived in Branchville for the past fifteen years. Their hours there were from nine P. M. until five A. M.

Q. Did you call these men out on the morning of January 3rd, 1924?

A. They were called by the third trick operator.

Q. And you succeeded him?

A. Yes, sir.

Q. They made up a train?

A. Yes, sir.

[fol. 106] Q. What time were they called?

A. About 7:45.

Q. What were they called for?

A. To go to Fort Motte for a disabled engine, which was engine number 683.

Q. Fort Motte was beyond Columbia?

A. No, sir, beyond Orangeburg.

Q. And between there and Columbia?

A. Yes, sir.

Q. Their engine was what number?

A. Number 483.

Q. After they left there—what time did they have the accident?

A. About 9:35 A. M.

Q. They were on duty from nine P. M. until five A. M. the night before?

A. Yes, sir.

Q. And they were on duty in all about nine and a half hours within twenty-four hours?

A. Yes, sir.

Q. Is that the order that you delivered to Conductor Youngblood (handing order to the witness)?

A. Yes, sir.

Q. Is that his signature?

A. Yes, sir.

Q. He signed that?

A. Yes, sir.

Q. What is that card?

A. A clearance card is what it is called.

Q. Number what?

A. It is form 603.

Q. He signed that clearance card and signed for the order?

A. Yes, sir.

Q. That order directed him to meet extra train number 723 at Orangeburg?

A. Yes, sir.

Q. And do what then?

A. Run extra to Andrews.

Q. Did you give him any other written orders outside of that one?

A. No, sir.

Q. That engine left there at what time?

A. About 8:35.

Q. Just the engine and the tender?

A. Yes, sir.

[fol. 107] Q. For what place?

A. Andrews yard.

Q. It was to meet extra 723 at Orangeburg?

A. Yes, sir.

Q. It was a meet order?

A. Yes, sir.

Q. And Captain Youngblood signed for that and had it with him when he left on train 483?

A. Yes, sir.

Q. Now, is there anything on this order that you delivered to Captain Youngblood that would indicate that any other orders would be delivered to him at Orangeburg?

A. No, sir.

Q. Or anywhere else?

A. No, sir.

Q. Now, extra trains are put out only by train orders?

A. Yes, sir.

Q. And when a train order is put out and delivered to a conductor running an extra train, that order continues in force until it is fulfilled, superseded or annulled?

A. Yes, sir.

Q. You were operator at this time at Branchville?

A. Yes, sir, I was.

Q. Where are you now?
A. Washington, D. C.
Q. Doing what?
A. Working for the railroad.
Q. A person with an order of that kind, and approaching a station, and the semaphore board is let down for him to pass, where should he go under an order of that kind?
A. Go into the side track.

Mr. Brown: I object to that, first because it is leading, and second because it is opinion evidence on the part of the witness.

Mr. Harley (continuing):

Q. Where should he go with that meet order, when he approaches a station, and gives a signal for the semaphore board, and it is let down,—what does that mean?
A. That he should stay there for number 723.
[fol. 108] Q. It means to proceed when you let it down?
A. When you let the board down?
Q. Yes.
A. Yes, sir, it does.
Q. Where to?
A. To the meeting point with 723.
Q. At Orangeburg?
A. Yes, sir.
Q. As specified in the only order that he had?
A. Yes, sir.

Cross-examination.

By Mr. Wolfe:

My original home is in St. George, South Carolina. I have worked for the railroad and for the express company about ten years. I was working at Branchville as operator at the time of this accident. I have not worked at Orangeburg, but my brother has. I now work in Washington, D. C. After the accident I was taken to Charleston and worked there awhile, and then from Charleston I was sent to Washington. I went on duty at Branchville at eight o'clock on the morning of January 3, 1924. Mr. Dawson preceded me at Branchville as operator.

Q. What time did Mr. Pearce ask you to get this crew out,—that is, Mr. Dantzler and Mr. Youngblood?

A. He was ordered before I went on. He gave the order at least before I went on duty.

Q. You didn't know anything about his ordering them out?

A. No, sir, not until I went on duty.

Q. You went on at eight o'clock?

A. Yes, sir.

Q. Soon after you went on duty, Mr. Rogers, who was a dispatcher then, and who has since the death of Mr. Fox been appointed Chief Dispatcher, went on duty at the same time you did?

A. Yes, sir.

Q. He sent you this order here (indicating to witness)?

A. Yes, sir.

Q. You were at Branchville?

A. Yes, sir.

[fol. 109] Q. And that was the starting point of this crew?

A. Yes, sir.

Q. That was proper?

A. Yes, sir.

Q. You only keep three copies?

A. Yes, sir, only three of this.

Q. There was one for your files?

A. Yes, sir.

Q. And two—one for the engineer and one for the conductor of extra 483?

A. Yes, sir, that is right.

Q. You gave this copy to Mr. Dantzler?

A. Yes, sir.

Q. And this to Mr. Youngblood?

A. Yes, sir, that is correct.

Q. Then they got ready to start on the trip?

A. Yes, sir.

Q. They were going to Fort Motte?

A. Yes, sir.

Q. To relieve extra train number 683?

A. Yes, sir.

Q. The engine there had become disabled?

A. Yes, sir.

Q. And they were to pull that train on to Andrews?

A. Yes, sir.

Q. Mr. Witherspoon was the fireman?
A. Yes, sir.
Q. And they had all been assembled by Mr. Dawson, who preceded you on the job?
A. Yes, sir.
Q. And you gave them the authority?
A. Yes, sir.
Q. That is to proceed on the way?
A. Yes, sir.
Q. Those are the documents?
A. Yes, sir, that is correct.
Q. When they got ready to go according to the rules and regulations you gave them what?
A. A clearance card.
[fol. 110] Q. That is form 603?
A. Yes, sir.
Q. That is shown in the rule book?
A. Yes, sir, the form is in there.
Q. In railroading you speak of it as a 603?
A. Yes, sir.
Q. This is the clearance card signed by you?
A. Yes, sir.
Q. It was proper for you to give that clearance card to them before they proceeded?
A. Yes, sir.
Q. They could not move without it?
A. No, sir, they could not.
Q. In that card, you gave the date?
A. Yes, sir.
Q. And addressed it to the conductor and the engineer?
A. Yes, sir.
Q. You stated that it is a "31" order?
A. Yes, sir.
Q. You said on this clearance card that you gave those gentlemen that the block is O. K.?
A. Yes, sir, to the meeting point.
Q. That meant that it was clear to the point designated in the order which they had?
A. Yes, sir.
Q. The O. K. on there meant that the railroad track was clear to Orangeburg?
A. Yes, sir.
Q. To the meeting point?

A. In that order, yes, sir.

Q. They left?

A. Yes, sir.

Q. As far as your office was concerned you didn't give any further orders in respect to the movement of that train, known as extra train number 483?

A. No, sir.

Q. It was gone?

A. Yes, sir.

Q. And you had nothing else to do with it?

A. No, sir.

Q. You took two copies of this order for the conductor [fol. 111] and the engineer?

A. Yes, sir.

Q. That was a number thirty-one order?

A. Yes, sir.

Q. And it was sent out simultaneously by Mr. Rogers, the dispatcher in Charleston?

A. Yes, sir.

Q. To your office?

A. Yes, sir.

Q. And to Orangeburg, too?

A. Yes, sir.

Q. The rule requires that it should have been sent to as many officers along the line as might be affected by the movement of those trains?

A. Yes, sir.

Q. Now, when you heard that message at Branchville on your instrument, did it contain, or was it addressed to "and operator"?

A. At Orangeburg?

Q. Yes.

A. Yes, sir, I heard him put it out to extra 723 and operator.

Q. When it passed through your office it had those words "and operator" in it?

A. Yes, sir.

Q. You heard that?

A. Yes, sir.

Q. Of course, that did not affect you?

A. No, sir.

Q. That would only affect the Orangeburg operator?

A. Yes, sir.

Q. Where the trains were to meet?
A. Yes, sir.
Q. You are sure it had those words in it there?
A. Yes, sir.
Q. Who was on duty at the Orangeburg office when that message went through?
A. Mr. Jones.
Q. Did you hear him repeat the message back?
A. No, sir, I was busy.
Q. You don't know whether he repeated it back with the words "and operator" or not?
A. No, sir.
Q. Now, having the words "and operator" in it, and being what is known as a thirty-one order, the operator at Orangeburg should have made five copies?
A. Yes, sir.
[fol. 112] Q. That was proper?
A. Yes, sir.
Q. And of the five copies that he should have made, one would be a record for the office?
A. Yes, sir.
Q. Two copies of that would go to each of the trains affected by the order?
A. Yes, sir.
Q. Namely, extra 483 and extra 723?
A. Yes, sir.
Q. The operator up there ought to have had five copies of that order then?
A. Yes, sir.
Q. That is the operator at Orangeburg?
A. Yes, sir.
Q. And when Mr. Tyson succeeded him, Mr. Jones should have turned over to him five copies of that order?
A. Yes, sir.
Q. Now, having five copies there, as he should have had, whoever was on duty at Orangeburg ought to have held the board on him and given them two copies of the order?
A. Yes, sir.
Q. If he had the five copies?
A. Yes, sir.
Q. And he should have had five copies of the order?
A. Yes, sir.
Q. He ought to have had five?

A. If it was addressed "and operator," yes, sir.
Q. You heard it addressed that way?
A. Yes, sir.
Q. And he should have had five copies?
A. Yes, sir.
Q. Then he should have gone out and given them two copies of the order when they reached Orangeburg?
A. Yes, sir.
Q. And held the board on them until that was done?
A. Yes, sir.
Q. He should have given a clearance card, too?
A. I don't know that that was necessary.
[fol. 113] Q. You heard the Chief Dispatcher testify yesterday?
A. Yes, sir.
Q. He was your superior?
A. He was then.
Q. He says it should have been done?
A. Yes, sir.
Q. You gave him a clearance card?
A. I did, yes, sir.
Q. And stated in it that the block is clear?
A. Yes, sir.
Q. The rules require that?
A. Yes, sir.
Q. And you did your duty?
A. I think so.

J. B. Witherspoon, a witness for the defendants, sworn, testified as follows:

Direct examination.

By Mr. Harley:

Q. You are employed at present by the Southern Railway Company?
A. Yes, sir.
Q. What position do you hold with that Company?
A. At the present?
Q. Yes.
A. Locomotive engineer.
Q. You were on this engine 483?

A. Yes, sir.

Q. You were the fireman?

A. Yes, sir.

Q. When were you called out at Branchville to go to work?

A. When?

Q. Yes,—on the morning in question,—what time were you called out to go to work?

A. Between seven and eight we received the call.

Q. Who called you?

A. The operator had me called.

Q. How long had you worked in Branchville?

A. I had been on that job about three years.

Q. How long had Mr. Dantzler and Mr. Youngblood been on that job?

[fol. 114] A. I don't know, but they had been on there for several years, I think.

Q. When you were called out, what did you do?

A. I went to engine 483.

Q. Had it already been fired up?

A. Yes, sir, it was ready to move.

Q. When you got there, who was on the engine?

A. Engineer Dantzler.

Q. When did Mr. Youngblood come?

A. A short while afterwards?

Q. He came up?

A. He came up with the orders.

Q. Did you see them?

A. No, sir.

Q. Did Mr. Youngblood show Mr. Dantzler his copy of the orders that he had?

A. From the top of the water tank where I was engaged in my duty, I saw Mr. Dantzler and Mr. Youngblood reading the orders together.

Q. This is the order that Mr. Youngblood had?

A. I didn't see it myself.

Q. What time did your engine start out?

A. About 8:25 or 8:30.

Q. Did Captain Youngblood tell you where he was going?

A. Yes, sir, after we started, I asked Youngblood what orders we had, and he said we have nothing but run extra to Andrews and meet 723 at Orangeburg.

Q. You all were on the engine?

A. Yes, sir.
Q. All three of you?
A. Yes, sir.
Q. And you had just the engine and tender on this train?
A. Yes, sir.
Q. After the conductor told you that,—did you stop anywhere then?
A. We stopped at the packing house track at Orangeburg.
Q. Did you get a nineteen order anywhere along the road?
A. Yes, sir, at Rowesville.
Q. How far is that from Orangeburg?
[fol. 115] A. Eight or nine miles.
Q. How far is Rowesville from the packing house spur track at Orangeburg?
A. About seven miles.
Q. You got a "19" order at Rowesville?
A. Yes, sir.
Q. That is between Orangeburg and Branchville?
A. Yes, sir.
Q. You got the "19" order at Rowesville as your train passed?
A. Yes, sir.
Q. The nineteen order is one that the conductor does not have to sign for?
A. Yes, sir.
Q. What was that?
A. That number twelve would wait at the packing house track until 9:15 for extra 483 west.
Q. Where did you stop your train?
A. At the packing house track.
Q. You went in the side track?
A. Yes, sir.
Q. Number twelve passed you?
A. Yes, sir.
Q. That was going east?
A. Yes, sir.
Q. Towards Branchville?
A. Yes, sir.
Q. What time did they pass you there?
A. Between 9:05 and 9:10.
Q. That number twelve is the regular passenger train?
A. Yes, sir.

Q. From Columbia to Branchville in the morning?

A. Yes, sir.

Q. After it passed you there at the packing house switch, you then backed out on the main line?

A. Yes, sir.

Q. And proceeded?

A. Yes, sir.

Q. Under what order did you proceed?

A. Under our running order.

Q. Which was that number?

A. Number eighteen.

[fol. 116] Q. What happened as you approached Orangeburg?

A. We arrived at the semaphore board and the engineer blew four blasts of the whistle for the semaphore board, which was against us at the time.

Q. Then what happened?

A. The board was changed to clear.

Q. Then what did the engineer do?

A. He answered the board with two blasts of the whistle and called out to me a clear board.

Q. Then what did you do?

A. We proceeded on.

Q. What happened?

A. We went on up the main line on our running order.

Q. Where did you stop?

A. After we passed the semaphore, and was going up by the pass track switch another engine gave a blast of the whistle, which indicates stop, and Dantzler stopped at the west end of the pass track, and Youngblood got down and examined the switch, and we pulled up over the switch, and Youngblood came up and got on the engine.

Q. Then what?

A. We proceeded on our way.

Q. Did you make a statement to him after he went out of the switch?

A. Yes, sir.

Q. What conversation was had?

A. I asked him if he did not intend to back in there, and he said no, we have time to go to Stilton, and I went to work on my fire, and the next time I realized where we were we were going over the switch at Stilton, and I turned to him to ask if he was going in there, and at that time

he hollered to me to get ready to jump,—we are going to hit.

Q. Did you hit?

A. Yes, sir.

Q. And afterwards you found yourself in the hospital.

A. Yes, sir.

Q. That is all you know until later on?

A. Yes, sir.

[fol. 117] Cross-examination.

By Mr. Wolfe:

Q. Mr. Witherspoon, you now live where?

A. Branchville.

Q. You were living there at the time of the accident?

A. Yes, sir.

Q. You had been there for some time?

A. Yes, sir, about three years.

Q. You were the fireman on this train?

A. Yes, sir.

Q. On number 483?

A. That's right.

Q. Mr. Youngblood was the conductor and Mr. Dantzler the engineer?

A. Yes, sir.

Q. You had not been working long at Branchville in that service, had you?

A. I had been firing for Mr. Dantzler three years.

Q. That morning was awfully foggy?

A. Yes, sir.

Q. It was one of the biggest fogs you had ever seen?

A. Yes, sir.

Q. When you got up to Orangeburg?

A. Yes, sir, it was very foggy.

Q. It was very foggy all along?

A. It was foggy, yes, sir.

Q. People had to turn on the automobile lights?

A. I didn't see any.

Q. They should have done it?

A. It would have been a good idea.

Q. You got the orders and started out from Branchville?

A. Yes, sir.

Q. Towards Orangeburg?

A. Yes, sir.

Q. The order, as you understood it from Conductor Youngblood, was first a running order?

A. Yes, sir.

Q. That is, to begin with?

A. Yes, sir.

Q. And in the course of your trip, extra 483 was to pass [fol. 118] extra 723 at Orangeburg?

A. Yes, sir.

Q. You were to fire the locomotive and keep up the steam?

A. Yes, sir.

Q. And that took all of your time?

A. Yes, sir, pretty much all of it.

Q. When you got up to Rowesville you got what is called a "19" order there?

A. Yes, sir.

Q. Your brother was operator then?

A. Yes, sir.

Q. And you saw your brother come out as you approached Rowesville and you reached out your arm and took it in?

A. Yes, sir.

Q. That is a hoop order?

A. Yes, sir.

Q. Or a "19" order?

A. Yes, sir.

Q. This order is to J. D.,—which is Orangeburg?

A. I am not familiar with the telegraph end of it.

Q. You don't know what the J. D. is for?

A. No, sir, I am not familiar with that part.

Q. It says, number 12, engine 1055, wait at packing house track switch Orangeburg until 9:15 A. M., for extra train number 483?

A. Yes, sir.

Q. That was the hoop order that you took?

A. Yes, sir.

Q. Of course, you turned it over to the conductor, Mr. Youngblood, or the engineer?

A. Yes, sir, to the conductor.

Q. He was on the engine with you?

A. Yes, sir.

Q. Your train proceeded until you approached the packing house switch?

A. Yes, sir.

Q. That is about three-fourths of a mile east of Orangeburg?

A. Yes, sir.

Q. That is, from the passenger station?

A. Yes, sir.

Q. That siding out there at the packing house curves out?

A. Yes, sir, to the right in the way that we were going.

[fol. 110] Q. Number twelve, the passenger train, was standing and waiting for you?

A. No, sir, it had not arrived yet.

Q. It had not reached the switch yet?

A. No, sir.

Q. Well, when you all got there, Mr. Dantzler and Mr. Youngblood headed in and obeyed the order?

A. Yes, sir.

Q. While you were in that track number twelve passed you?

A. Yes, sir.

Q. Then you all passed out and went on to Orangeburg?

A. Yes, sir.

Q. The station at Orangeburg is right on Russell Street?

A. Yes, sir.

Q. That is the main street of the city?

A. Yes, sir.

Q. It goes up into the business part of the city?

A. Yes, sir.

Q. And the Southern tracks cross Russell Street there at right angles?

A. Yes, sir.

Q. Just as your train, extra 483, approached, Mr. Dantzler was at the throttle, and he sounded four blasts with his whistle?

A. Yes, sir.

Q. That was proper and it was according to the rules?

A. Yes, sir.

Q. That was to notify the operator on duty there at Orangeburg that he had arrived?

A. Yes, sir.

Q. Then the operator dropped the red board?

A. Yes, sir.

Q. And gave you what?

A. A clear board.

Q. The operator dropped it?

A. Yes, sir.

Q. And they call that white or clear?

A. Yes, sir, clear.

Q. That under the rules means to go on?

[fol. 120] A. Yes, sir.

Q. When he first approached it, that was the position that it was in (indicating to the witness)?

A. Yes, sir.

Q. And then when he blew the four blasts of the whistle he dropped it in this position (indicating to the witness)?

A. Yes, sir, that is right.

Q. The name of this (indicating), in the rule book is clear signal?

A. Yes, sir, that is it.

Q. On Russell Street there is a good deal of traveling?

A. Yes, sir.

Q. And in the day time there is a flagman there for trains and to protect that crossing?

A. Yes, sir.

Q. Then, Mr. Witherspoon,—Russell Street, as I said, is the main street in Orangeburg?

A. Yes, sir.

Q. And it is about a half mile from the Court House to the railroad station?

A. Yes, sir, about that.

Q. You say now, to go back a minute, that they had a flagman there at that time?

A. Yes, sir, there was a flagman on the crossing that morning.

Q. They were due to have one there?

A. Yes, sir.

Q. And there was one there?

A. Yes, sir.

Q. Did you see him?

A. Yes, sir.

Q. You knew who he was?

A. Yes, sir.

Q. You were surprised to see who it was?

A. No, sir, I was not surprised.

Q. It was your boss?

A. Yes, sir.

Q. He is the train master in Charleston?

A. Yes, sir.

Q. He was there that morning flagging you across Russell Street in the City of Orangeburg?

A. Yes, sir, he was there.

Q. As a matter of fact the regular negro flagman was sick, and your boss was just relieving him awhile?

[fol. 121] A. I don't know.

Q. But he did flag you across?

A. Yes, sir.

Q. What kind of sign did he give?

A. The come ahead signal over the crossing.

Q. He gave you the come-ahead signal?

A. Yes, sir.

Q. The crossing is about seventy-five feet from the semaphore board there at the station?

A. In the neighborhood of that.

Q. Which one of the three that was on the engine remarked that there is Mr. Walker?

A. I don't know, but one of us did.

Q. Mr. Walker was there signing you ahead?

A. Yes, sir.

Q. All of you were under the jurisdiction of Mr. Walker?

A. Yes, sir.

Q. All employees on that division are under his jurisdiction?

A. Yes, sir.

Q. And you looked out that morning and saw him flagging your train across the crossing?

A. Yes, sir, he flagged us across.

Q. When you looked out, he was there signing up ahead?

A. Yes, sir.

Q. Then when you all saw Mr. Walker there signing you ahead, it was about the time that Mr. Dantzler blew for the semaphore board?

A. It was just after he blew for the board.

Q. Mr. Dantzler was slowing up as he was going to stop on the crossing?

A. Yes, sir, there is an *au*diance of the town for the cros-ing to be flagged, and unless the flagman is there some member of the train crew has to do that. There is an ordinance there to that effect.

Q. Mr. Dantzler started to slow up?

A. Yes, sir.

Q. And when Mr. Walker signed you ahead you didn't [fol. 122] have to stop on the crossing?

A. No, sir.

Q. Or flag it over yourselves?

A. No, sir.

Q. You saw that when Mr. Dantzler blew four blasts of the whistle, the operator on duty then dropped the board from red to white?

A. Yes, sir, clear signal.

Q. Mr. Dantzler replied to that?

A. Yes, sir.

Q. How?

A. With two short blasts of the whistle.

Q. Which means,—I see you?

A. It means I have your signal.

Q. Mr. Dantzler proceeded on by the semaphore board?

A. Yes, sir.

Q. The operator did not come out and give him a copy of the order or anything?

A. No, sir.

Q. Or a clearance card?

A. No, sir.

Q. Then you all went on?

A. Yes, sir.

Q. And there was a train on the pass track?

A. Yes, sir.

Q. It was between the passenger station and the freight station there?

A. Yes, sir, it was between those two stations.

Q. The passenger and freight station I guess is about three hundred yards apart?

A. Something like that.

Q. All of you saw that train standing on the pass track?

A. Yes, sir.

Q. The main track is on the right hand side?

A. Yes, sir.

Q. The pass track is on the left?

A. Yes, sir.

Q. And that is on your side?

A. Yes, sir.

Q. You saw that train standing in there.

A. Yes, sir.

Q. You found out afterwards that was the local freight?

A. Yes, sir.

Q. That was number 61?

A. Yes, sir.

[fol. 123] Q. The pass track comes in to the railroad right of way down beyond my place up there?

A. It does now, but it did not then.

Q. Aren't yo mistaken?

A. We had a cross over switch that was not in operation at that time.

Q. It was not,—are you sure about that?

A. It was not in service.

Q. But it was built there?

A. Yes, sir.

Q. That is at Dr. Dunton's?

A. Yes, sir.

Q. And Mr. John Sifly's?

A. Yes, sir.

Q. You all passed number sixty-one?

A. Yes, sir.

Q. Then you went on and passed the freight depot?

A. Yes, sir.

Q. And you proceeded westward?

A. Yes, sir.

Q. And I believe you stated that the switch track up there was thrown or something was wrong with the lights,—it was showing red, wasn't it?

A. We thought there was something wrong, and the engineer on number 61 blew one blast of the whistle, and that was a caution signal, and we thought that there was something wrong with it.

Q. And Mr. Dantzler stopped?

A. Yes, sir.

Q. And Mr. Youngblood got out and got it right?

A. Yes, sir, he got out to see if anything was wrong with it.

Q. And I believe he threw it?

A. I don't know.

Q. Didn't he throw it from red to white?

A. I don't think. I think he just investigated it.

Q. He did get out and investigate that switch?

A. Yes, sir.

Q. It was on your side?

A. Yes, sir.
Q. You went on then?
A. Yes, sir.
Q. How far is Stilton from Orangeburg?
A. About two miles.
[fol. 124] Q. The accident happened a little less than a mile west of the Stilton station?
A. One-half or three-quarters of a mile.
Q. Which one said that we have time to make Stilton?
A. Mr. Youngblood.
Q. No attempt was made by Mr. Dantzler or Mr. Youngblood to go in the track at Stilton?
A. No, sir.
Q. They could have gone in there without any trouble?
A. Yes, sir.
Q. You could have gone in at the east end of the passing track at Stilton?
A. Yes, sir.
Q. Mr. Dantzler was a very careful man?
A. Yes, sir, he was.
Q. Mr. Youngblood was a very careful man?
A. Yes, sir.
Q. They were old employees?
A. Yes, sir.
Q. And were very careful?
A. Yes, sir, they were.
Q. You considered them so, didn't you?
A. Yes, sir, I did.
Q. You were badly injured in the wreck, weren't you?
A. Yes, sir.
Q. The last that you remembered was that you were going under the debris?
A. Yes, sir, the last thing I remember was the compact of the two engines.
Q. It was terrific?
A. Yes, sir.
Q. You were severely injured?
A. Yes, sir.
Q. You were injured in your head mostly?
A. Yes, sir.
Q. You don't even know when they took you to the Hospital?
A. No, sir, I don't know.

Q. There was three or four weeks down there that you didn't know anything at all?

A. No, sir.

Q. You didn't know one person from another?

A. That is correct.

[fol. 125] Q. You were unconscious for that period of time?

A. Yes, sir.

Q. The fact is that for a long time, Mr. Witherspoon, your family despaired of your life?

A. Yes, sir, I understand so.

Q. You have never recovered fully from the shock?

A. I think I have.

Q. You do the best you can?

A. Yes, sir.

Q. What you have testified to is as best you can remember it?

A. Yes, sir.

Q. Of course, it is not as fresh on your mind now as it was then,—it could not be, could it?

A. I don't know.

B. C. WORKMAN, a witness for the defendants, sworn, testified as follows:

Direct examination:

By Mr. Harley:

I am at present employed by the Southern Railway Company, and was so employed in January, 1924. On January 3rd, 1924, I was head brakeman on extra train number 723. That train was called at three o'clock and left Columbia at 3:30 in the morning. Mr. Ulrich was the conductor, Mr. Brown was the engineer, and Hopkins was the fireman. I was riding on the engine with Brown and Hopkins. That train had seventy-two cars and Conductor Ulrich was in the cab at the back of the train.

Q. What time did that train get to St. Matthews?

A. Around 8:15.

Q. How long did it stay there?

A. It stayed there ten or twelve minutes.

Q. Then what happened?

A. We did all of the work there, and went to Riley, and went in the passing track, and let number twelve by there.

[fol. 126] Q. That is the passenger train?

A. Yes, sir.

Q. You let it pass you at Riley?

A. Yes, sir.

Q. Then what?

A. We went on to No. 87 water tank and took water there, and then went on down and number 483 hit us.

Q. Where was that wreck?

A. At the 83 mile post.

Q. That was west of Stilton?

A. Yes, sir.

Q. Towards Columbia from Stilton?

A. Yes, sir.

Q. What was the result of the wreck?

A. Causing the death of Brown, Ulrich and Hopkins.

Q. You got out?

A. Yes, sir.

Q. How?

A. On my head.

Q. Where were you sitting when the wreck occurred?

A. On the fireman's seat box.

Q. Were you hurt much?

A. I broke my shoulder and I was burned some.

Q. You were sent to the hospital?

A. Yes, sir.

Q. And you were there how long?

A. Around seven days.

Q. You have heard this order read here in Court a number of times,—you say your train reached St. Matthews around 8:15 that morning?

A. Yes, sir.

Q. If, after your train reached St. Matthews, you would have gotten a copy of the order, would it have changed the situation any?

A. No, sir.

Q. Why?

A. Because we had a right of way to Orangeburg.

Q. That is all you know about it?

A. Yes, sir, everything.

Q. You know when the agent at St. Matthews goes on duty in the morning?

A. He is supposed to go on at eight o'clock.

Q. Was he on duty that morning?

[fol. 127] A. The board was down. I don't know whether he was there or not. He may not have reached there yet.

Cross-examination.

By Mr. Brown:

Q. How fast was your train moving?

A. Eighteen or twenty miles an hour.

Q. The west end of the passing track at Orangeburg, if you were going in there, was a mile from the semaphore board?

A. Something like that.

Q. The semaphore is down at the depot?

A. Yes, sir.

Q. Yet you say that notwithstanding you had a copy of the order at St. Matthews, telling you to meet a train at Orangeburg, and if the agent at Orangeburg had done his duty, and kept that other man at the semaphore board,—it would not have changed you, but you would have come on in there at thirty miles an hour?

A. Yes, sir, up to the yard limit.

Q. You would have come on in?

A. Yes, sir.

Q. Where is that yard limit?

A. Outside of the city limits.

Q. You would have been forced to have recognized the flagman or any kind of signal to stop,—if the agent at Orangeburg was to protect you?

A. You mean me?

Q. I am talking about the train?

A. Well, say so.

Q. If you had been coming down there at twenty miles an hour, and the other man was standing at the board with the red on him, you would have come in to the west end of the track and approached it so you could have stopped on the slightest sign of danger?

A. Yes, sir, I would have stopped.

Q. Could you have stopped?

A. Yes, sir.

Q. If you had gotten a copy of the order at St. Matthews, it would have changed your course of conduct, so that you [fol. 128] would have had your engine under control at Orangeburg and ready to stop on the slightest danger?

A. Yes, sir, I would have stopped.

Q. At Orangeburg?

A. Yes, sir.

Q. Without an order?

A. Yes, sir, I had work there.

Q. What kind of work was there?

A. Setting off and picking up cars.

Q. On a through freight?

A. Yes, sir.

Q. You had work at Orangeburg that morning?

A. Yes, sir.

Q. Wasn't number 61, the regular morning freight train, in there doing that work?

A. I don't know anything about 61. I didn't get that far, Colonel.

Q. You would not have stopped at Orangeburg unless you had something to do?

A. Not if I had a clear board.

Q. They gave this fellow a clear board?

A. I don't know what he had.

Q. If you were coming up in the opposite direction?

A. I was coming east.

Q. From Columbia?

A. Yes, sir.

Q. And say you were entitled to two copies of an order and a clearance card, when you reached the semaphore board at Orangeburg you would expect them to keep the red on you until you got one or both,—wouldn't you expect to do that?

A. Yes, sir.

Q. If you were entitled to that, you would expect it when you reached that semaphore board?

A. Yes, sir.

(Mr. Harley offers in evidence on behalf of the defendants receipts signed by Conductor Youngblood and Engineer Dantzler, showing that they received new rule books numbers 11283 and 14341, respectively.)

[fol. 129] H. E. THOMPSON, a witness for the defendants, sworn, testified as follows:

Direct examination.

By Mr. Blatt:

I am familiarly known in this territory as Smoke Thompson. I am 58 years old, and am now employed by the Southern Railway Company as Engineer. I helped build the road from Blackville to Columbia, and was one of the first engineers to run on that road. I have been an engineer for thirty-seven years, and am now an engineer. The runs I have been on are the Batesburg Branch, and from Columbia to Savannah. I did live at Blackville, which was my headquarters, and I lived at Seivern awhile. I have relatives in this County by marriage. I married Miss Lamb Buist from Blackville. I still run through here as an engineer.

Q. You have heard read that order that extra train number 483 had on the occasion that we are talking about?

A. Yes, sir.

Q. If you were in possession of that order, Captain, and was running that train,—your train being an inferior train, and going to Orangeburg with that order in your possession, and upon giving four blasts of the whistle, and the semaphore board was given clear,—what would you have done under those circumstances?

A. With that order?

Q. Yes.

A. I would have headed in the side track.

Q. For what?

A. To meet extra 483 or whatever the number was.

Q. How are extra trains run?

A. Upon train orders.

Q. Written or verbal?

A. Written orders.

Q. Is there such a thing as a verbal order as applied to special or extra trains?

A. No, sir.

[fol. 130] Q. What was he to do first under that order?

A. Head in the track at Orangeburg.

Q. Into the siding or passing track?

A. Yes, sir.

Q. Tell whether or not with an engineer, with that order in his possession,—with the dropping of the semaphore board,—could he go on by?

A. No, sir.

Q. What did the dropping of the semaphore board mean?

A. We have no further orders for you.

Q. Do engineers operate on an assumption by seeing some train for instance, and saying that that is the train they are to meet,—do they do that?

A. No, sir.

Q. How do they go about that?

A. In the case of an extra train you go by the engine numbers, and you find out in that way.

Q. Are you at liberty to proceed under the assumption that your train is there?

A. No, sir.

Q. Would you have done it?

A. No, sir.

Q. How is a written order done away?

A. A written train order?

Q. Yes?

A. Either fulfilled, superseded or annulled.

Mr. Wolfe: That is a matter of law. The President of the road could give a verbal order that would abrogate the rule. That is a question of law in our opinion, and not one of fact.

Mr. Blatt: This train, as are all other trains, were operated under the written rules of the Company.

The Court: I think four witnesses have been examined on the same line. Go ahead.

Mr. Blatt (continuing):

Q. If Conductor Youngblood passed Orangeburg without [fol. 131] waiting and going into the siding or pass track, had he fulfilled that order?

A. No, sir.

Q. Did he violate that rule of the Company, if he passed there without doing that?

A. Yes, sir.

Q. Had that order been superseded or annulled?

A. No, sir.

Q. Every train that starts out has a written order?

A. Every extra train has.

Q. And it can be done away with or abrogated only by another written train order?

A. Yes, sir.

The Court: Of course, you understand, gentlemen, I am not admitting that as a matter of his stating the law, but he can say as to the railroad rules. This witness cannot, of course, say what the law is, and I am not admitting it for that purpose.

Mr. Blatt (continuing):

Q. Are you familiar with the situation at Orangeburg?

A. No, sir.

Q. You don't run that way?

A. No, sir.

Q. I believe that is in the Charleston division?

A. Yes, sir.

Q. And you are on what is known as the Columbia division?

A. That is correct.

Q. Is there such a thing as the annulling of a written train order by the dropping of the semaphore?

A. No, sir.

Q. Who are written orders delivered to?

A. The conductor and the engineer.

Q. If no message is given to an operator,—what is the duty of the Conductor?

A. To fulfill the order that he has.

Q. Until he receives what?

A. Until he receives another order doing away with it.

[fol. 132] Cross-examination.

By Mr. Brown:

Q. You said when that man ran up there, that the order under which he was running had neither been fulfilled, superseded or annulled?

A. No, sir.

Q. How do you know?

A. I am going by what happened.

Q. You swore on your oath to the jury here, and against the interest of widows and orphans here, that that written order had not been superseded, annulled or fulfilled?

A. It evidently had not.
Q. You still swear that?
A. Yes, sir.
Q. Where were you on the morning in question?
A. I don't know.
Q. You were not on train number 483?
A. No, sir.
Q. Or on 723?
A. No, sir.
Q. Or on train number 61?
A. No, sir.
Q. Or those other trains passing along there?
A. No, sir.
Q. You were not connected with that Charleston division?
A. No, sir.
Q. You are on another division entirely?
A. Yes, sir.
Q. Yet you come here and answer that you know that at the time that the train passed there that the order had not been superseded, annulled or fulfilled?
A. He asked about that order——
Q. Didn't he ask you that when he passed that semaphore board, if that order had not been fulfilled, superseded or annulled?
A. Yes, sir.
Q. You swear that?
A. I didn't swear I knew it personally.
Q. What do you say?
A. I am testifying by that order.
[fol. 133] Q. Then it is hearsay?
A. I am testifying to the rules under that order.
Q. Then you do not swear that you knew, or that you now know, that that order had not been superseded,—and you don't know that it had not been fulfilled, or that extra 723 was not in the side track,—you swear none of those conditions had been fulfilled?
A. I swear on that order.
Q. You are swearing now of your own knowledge in a matter in which you are not interested, that at the time that Dantzler and Youngblood passed that semaphore board that morning, notwithstanding any information that they might have had that the order had been cancelled, superseded or fulfilled, you swear before this jury that they vio-

lated the rules, and that those conditions had not been complied with?

A. I am going by the order that was read in this case.

Q. Of your own knowledge, now Captain?

A. I don't know of my own knowledge.

Q. The order does not say anything about it being annulled, or going into the side track, or who was to go into the side track?

A. No, sir.

Q. There is a question as to which was the superior train in this case?

A. I don't know.

Q. Notwithstanding those things, you say that Youngblood and Dantzler violated all of the rules of precaution of the railroad, and without any common sense, and went up there with the order not cancelled, superseded or fulfilled,—you swear to that?

A. To the best of my knowledge, yes.

Q. What is your knowledge?

A. That order there.

Mr. Brown: Then, we move to strike out his testimony as being hearsay. I want that to go on the record.

[fol. 134] Mr. Brown (continuing):

Q. How long have you been on the road?

A. Thirty-seven years.

Q. Did you know Mr. Dantzler?

A. Yes, sir.

Q. You knew Mr. Youngblood?

A. I knew of him.

Q. You don't doubt but what they were careful men?

A. No, I don't.

Q. Mr. Dantzler was an engineer?

A. Yes, sir.

Q. When Mr. Youngblood, being in charge of that train, approached that station at Orangeburg, and had Engineer Dantzler blow the signal as to the red board being on him, then what was Youngblood and Dantzler entitled to from the railroad?

A. They were entitled to what they had.

Q. What?

A. An order to meet number 723 at Orangeburg.

Q. What else?

A. When they gave the board to them they had no further orders for them.

Q. What were they entitled to when the red board was on?

A. As they went into Orangeburg?

Q. Yes, sir,—tell us?

A. They were not entitled to anything after they gave them the board.

Q. Were they not entitled to two copies of the thirty-one order and a clearance card the same as Von Hindenberg gave them at Branchville?

A. No, sir.

Q. Then everybody else is wrong in the case, and the rule book to the contrary,—you swear that a "31" five copy order, should not have been given them?

A. You have not mentioned a five copy order.

Q. How long does it take you to learn what a thirty-one "31" five copy order means?

A. No, sir, I have not seen it.

Q. You have heard me mention a five copy order?

A. Yes, sir.

[fol. 135] Q. Look at that order,—that is what is known as a five copy thirty-one order, isn't it?

A. If there had been five copies there that is what they should have had.

Q. If that order was sent by Mr. Rogers to Orangeburg to Mr. Jones, the operator on duty there, then wasn't Mr. Jones and Tyson, when the office was turned over to him by Jones, to deliver two copies of the order to Youngblood and Dantzler before they passed that semaphore board?

A. Yes, sir, with a five copy order.

Q. What is that (indicating order to the witness)?

A. A five copy order.

Q. If Jones had done his duty, and Tyson too, and they had held the red board on him and gave him two copies of this order and a clearance card, then he would have had two copies of the order as a final notice to go into the side track?

A. Yes, sir.

Q. And to wait there for number 723?

A. Yes, sir.

Q. You have heard them say that Mr. Walker was there flagging the crossing in the place of the old crippled negro flagman, and that Walker, when they dropped that red, and showed the white board, gave them the "high ball" to go on?

A. I think Mr. Witherspoon said that.

Q. You heard them say that?

A. One of them, I think, said so.

Q. You heard them say that train number 61 was standing in the side track?

A. I heard them say that Mr. Walker flagged them over the Street there.

Q. Didn't you hear them testify in the language that Mr. Wolfe was reading, when he was examining some of them?

A. I heard them say that Mr. Walker flagged them across.

Q. You heard Witherspoon testify?

A. Yes, sir.

Q. And you heard him say that he gave him the clear sign to go ahead?

A. Yes, sir, over the Street.

[fol. 136] Q. Did he say the Street?

A. They were talking about that.

Q. Russell Street is right there at the depot?

A. I don't know.

Q. It is seventy-five feet from the semaphore board?

A. I don't know about that.

Q. You heard Witherspoon say that?

A. I didn't hear him say the distance.

Q. Didn't you hear Mr. Witherspoon say that Mr. Walker, his superior, was there, and that he was surprised to see Mr. Walker there?

A. Yes, sir.

Q. That he was flagging the crossing?

A. Yes, sir.

Q. And when they went up and blew four blasts of the whistle, and that was to mean what have you got for us here, and the white board came on, and Mr. Walker gave them the "high ball" to go ahead?

A. Yes, sir, to go ahead.

Q. How long have you been running on the road?

A. Thirty-seven or thirty-eight years in all.

Q. You don't claim that Jones and Tyson and Von Lehe, or Mr. Rogers, or yourself, are infallible?

A. No, sir.
Q. You all violate the rules?
A. No, sir, not that much.
Q. You all violate the rules?
A. We might sometimes.
Q. You have done it a thousand times?
A. Not that much, no.
Q. Then nine hundred?
A. I don't think so.
Q. They have had you up for running through the various towns too fast?
A. I don't know.
Q. You have had more wrecks than anybody else?
A. I don't know as I have.
Q. You have had more than anybody, now haven't you?
[fol. 137] A. No, sir, I have had two in thirty-eight years.
Q. You have had only two?
A. Yes, sir.
Q. How many people have you killed?
A. Not any, I don't think.
Q. How many has your train killed,—of course you haven't shot anybody, Captain,—you are known all along the line as "reckless Smoke Thompson"?
A. No, sir.
Q. Don't everybody in Barnwell County know you by that name?
A. No, sir, I don't think.
Q. Weren't you running the train that killed the chain-gang crowd out here?
A. No, sir, Mr. Hicks was running that one.
Q. How many wrecks have you had?
A. Two or three.
Q. How many times were you laid off?
A. Not any.
Q. Where were they?
A. On the Plant system.
Q. What did they do to you?
A. Nothing after I got well. I went back to work again as soon as I got well enough.
Q. Where did you have another one?
A. I had one at Styx.
Q. What did they do to you then?
A. They ran the other man off.

Q. Somebody violated the rules?

A. Yes, sir, every time they have a wreck somebody violates the rules somewhere.

Q. You don't even claim in this case that everybody connected with this thing, from Von Lehe down through Mr. Walker, and Mr. Jones, and Mr. Tyson, were not violating the rules and using the precaution that good railroading required in this case,—do you?

A. No, sir, I don't claim it.

Mr. Wolfe: If the Court please, with your permission [fol. 138] I would like to ask a few questions of the witness.

The Court: All right, sir.

Examination by Mr. Wolfe:

Q. Mr. Thompson,—I am showing you now the train order book that contains the original message to meet at Orangeburg,—that is for number 483 and 723 to meet at Orangeburg, or affecting those two trains, and that message contains two words "and operator," doesn't it?

A. Yes, sir.

Q. That now means that that is what is known as a form thirty-one (31), five copy order?

A. Yes, sir.

Q. In railroad parlance?

A. Yes, sir.

Q. It is also spoken of as a middle order or a meet order?

A. No, sir, as a five copy order. It is not spoken of as a middle order.

Q. Isn't it both?

A. It can be used for that.

Q. Evidently the train dispatcher sent it out from Charleston with words "and operator" in it, the meet point being Orangeburg,—it was the duty of the operator there to make five copies of it?

A. Yes, sir.

Q. And it was his duty to give two copies of the order to each of the trains affected?

A. Yes, sir.

Q. If the operator at Orangeburg only made three copies, and dropped the board and passed them, and did not give two copies to the engineer and conductor,—then they were not getting all that was due them?

A. They were getting,——

Q. Answer yes or no,—they were entitled to two copies?
A. I don't know.
Q. Under a five copy order they were?
A. Under a five copy order he should have them, yes, sir.
Q. That is a five copy order (indicating)?
A. Yes, sir.
[fol. 139] Q. When extra 483 came there then,—shouldn't the operator have given them the two copies for them?
A. You could not give him what was not there.
Q. They ought to have been there?
A. Yes, sir, but you could not give him what was not there.
Q. But they ought to have been there?
A. Yes, sir.
Q. All had not been done that should have been done?
A. It was done under the three copy order.
Q. Then that was a mistake?
A. Yes, sir.
Q. The engineer and conductor should have had two copies?
A. Yes, sir.

Redirect examination.

By Mr. Blatt:

Q. If he had had at Orangeburg two copies of that order,—would it have been different from what he already had?
A. No, sir.
Q. It would have been a copy of the same thing?
A. Yes, sir, of what he had.
Q. It would convey to him no other information?
A. No, sir.
Q. His duty was to do what?
A. Go in the side tracks.
Q. If Conductor Youngblood had used the precaution set out in the order, his train being an inferior train,—would he have left Orangeburg before number 723 reached there?
A. No, sir.
Q. The order provided that he should meet a train there?
A. Yes, sir.
Q. And extra 483 being an inferior train,—is there such a thing as the train master or anybody else giving a verbal train order?
A. No, sir.

Recross-examination.

By Mr. Brown:

Q. If it was not an inferior train, and they were of equal [fol. 140] rank,—somebody had to tell which one to head in on the side track and where to go in?

A. You don't run them with equal rank.

Q. If they did run them with equal rank,—both extra trains now,—if that could happen,—somebody had to tell them where to head in?

A. No, sir.

Q. Why?

A. The rules tell that. You cannot run two extras alike.

Q. According to the testimony of Mr. Rogers, who is director of train movements under his job,—the least he was entitled to was a clearance card and understanding as to what he was to do?

A. No, sir, if he got the board you don't need a clearance card then.

Q. When the board was on him when they reached Orangeburg, what was the duty of Tyson or Jones, or whoever was there,—before the board was turned from red to white, under the testimony of Lee Rogers, he was entitled to an understanding as to what to do?

A. If he stopped there.

Redirect examination.

By Mr. Blatt:

Q. Are there any other stations similarly situated as Orangeburg where you pass the semaphore board, before you go into the siding or passing track?

A. Yes, sir.

Q. Where?

A. There is one at Blackville, and one at Allendale, and one at Barnwell also.

E. W. Bellinger, a witness for the defendants, sworn, testified as follows:

Direct examination.

By Mr. Blatt:

I was born in this County. My father was Dr. Martin Bellinger. I live in Columbia now. My position with the [fol. 141] Southern Railway is Chief Dispatcher, and my territory is Charlotte to Hardeeville. I have five train dispatchers under me in Columbia. I have been with the Southern Railway practically since 1902, and have been a dispatcher about twenty years. I have been in Columbia about half of that time.

Q. You have heard the order that was in possession of Captain Youngblood read in this case?

A. Yes, sir.

Q. How are extra trains run?

A. They are created by a thirty-one (31) order.

Q. Is that a written order?

A. Oh, yes.

Q. Is there such a thing as running a train by a verbal order?

A. No, sir, there is n

Q. Can you change a written order by a verbal order?

A. No, sir.

Q. Or can you change it by the train master waving his hand to the crew or something?

A. I never heard of it.

Q. Is there such a thing as changing it by the semaphore board dropping?

A. No, sir.

Q. When Captain Youngblood, with this order in his possession, reached Orangeburg,—what was his duty?

A. To go into the side track and meet number 723.

Q. Upon approaching the semaphore board with that order in his possession, after sounding four blasts of the whistle, and the board was given clear,—what was Captain Youngblood's duty then?

A. Under that order?

Q. Yes.

A. To proceed with the order he had.

Q. By doing what?

A. Meeting extra 723 by taking the siding.

Q. Was it his duty to go on down the road without a clearance card or another order?

A. No, sir. He didn't carry out his orders.

Q. Is there such a thing as annulling a written order by [fol. 142] a verbal order at Orangeburg?

A. No, sir, it would have been annulled by a written order only.

Q. And the same as to superseding?

A. Yes, sir.

Q. With the facts that I have given you, and if Captain Youngblood was on this extra train, and had signed for an order that would send him to Andrews, and he was running and inferior train, and he went to Orangeburg, and the semaphore board was dropped, and he passed his side track, and went two and one-half miles down to Stilton,—would you say that he had complied with his orders or had violated them?

A. He didn't comply with them.

Q. Had he violated them?

A. Yes, sir.

Q. Did he fulfill them?

A. No, sir.

Q. How could he have fulfilled them?

A. By remaining at Orangeburg until extra 723 had passed.

Q. What is the duty as to seeing another train, and then going on?

A. They have to know beyond a doubt that the train in question has arrived.

Q. They cannot go by guess work?

A. No, sir.

Q. But they must know beyond a doubt that the train they are to meet has reached there before they can proceed further?

A. Yes, sir, they must know it.

Cross-examination.

By Mr. Brown:

Q. All you know is that your testimony is opinion testimony?

A. Yes, sir.

Q. That is like reports?

A. Yes, sir.

Q. You can hear them from everywhere?

A. I guess so.

Q. It is your judgment against somebody else's judgment?

A. Yes, sir.

Q. That is it?

A. It is a question of the rules really.

[fol. 143] Q. Your testimony is based upon your opinion of the rules and the situation as it was there?

A. Yes, sir.

Q. And as to what ought to have happened?

A. Yes, sir, in my opinion.

Q. If you had been in Jones and Tyson's place what would you have done upon receipt of that message, and about the delivery of it, and with the precautions that should be exercised, what would you have done?

A. That brings back the question of the five copy order, addressed to 723 and operator. Two copies of that order should have been delivered to the 483, and two copies held for the 723, and one for the operator's files.

Q. No doubt about the fact that two copies should have been given to 483 before they got the white board when they reached Orangeburg, and before they were allowed to pass the semaphore,—on your oath, those two men on engine 483 were entitled to two copies of that order?

A. It was not there for them.

Q. They were entitled to it?

A. I agree with you that it should have been there.

Q. And they should have gotten it?

A. Yes, sir.

Q. And a clearance card too?

A. Yes, sir.

Q. Giving them permission to go by the switch?

A. Yes, sir.

Q. You don't know, except from what you heard here, whether the order had been fulfilled or not?

A. No, sir, all I know is that they hit. I knew it right off, and I sent the wreck train out there for it.

Q. Otherwise than that you heard they hit, you don't know that that order under the rules had not been fulfilled?

A. No, sir.

Q. You don't know that poor old Cleveland Youngblood was fully convinced by the actions of Tyson and Walker that the order had been fulfilled?

A. I could not place myself in his position.

[fol. 144] Q. You don't know?

A. No, sir, I don't.

Q. You don't know that Cleveland Youngblood was fully convinced that if he went by there he would go into the jaws of death,—you don't know that he was not convinced that train 723 was in there, and that he could proceed on his running order to Fort Motte?

A. I cannot place myself in his position.

Q. Then you don't know?

A. No, sir, and I wouldn't say.

Q. You don't know what he thought?

A. Not at all.

Redirect examination.

By Mr. Blatt:

Q. If the operator at Orangeburg would have given Dantzler and Youngblood two copies of the order,—wouldn't it have been the same as what they had?

A. Yes.

Q. Then it was their duty under their order,—the one they had in their possession,—to do what?

A. To go in the siding and wait.

Q. With or without a clearance card?

A. Yes, sir.

Q. With or without the dropping of the semaphore?

A. Yes, sir.

Q. And under all of the circumstances described to you, their failure to do it was a non-compliance?

A. Yes, sir.

Q. Was it the duty of the conductor to take extra precautions for his own safety?

A. Yes, sir, because the train dispatcher does not know conditions one hundred miles away.

Q. If Captain Youngblood in going into Orangeburg had complied with his order in writing, this thing never would [fol. 145] have happened?

A. No, sir.

Q. He would have stopped at Orangeburg?
A. Yes, sir.

Recross-examination.

By Mr. Brown:

Q. If they had not called him out after he had been working all night, he would not have gotten killed?
A. We have worked crews sixteen hours.
Q. If he had stayed in bed down there in Branchville he would not have gotten killed?
A. No, sir.
Q. If Jones or Tyson had come out and given him the additional copies, and called his attention to it,—he would not have gotten killed?
A. I don't agree with you there.
Q. But if Jones or Tyson, or whoever was there, had come out and given him two copies of the order and a clearance card to go into the side track,—he would not have been killed?
A. I cannot place myself in his position.
Q. If Tyson had given the two copies of the order to Dantzler and Youngblood, as Rogers says he should have done,—and he had gone into the siding,—he would not have been killed?
A. If he had not left Orangeburg he would not have gotten killed.
Q. If Jones and Tyson had come out and given him the order which they required to do, which they were required to give him, and called his attention that 723 was not in there, and that had caused him to go in the side track then as an extra precaution, he would not have been killed?
A. I don't know.
Q. Answer this plain and simple question,—if Tyson had been furnished with five copies of the order, which Mr. Rogers says that he instructed Jones to give him, and Tyson had given two copies to Youngblood, and that had [fol. 146] called Youngblood's attention to go into the siding, and he went in there, then he would not have been killed,—you can answer that question, I know?
A. I could not answer that. I say that he should have gotten the five copy message, but what the effect would have been I don't know.

Q. If when he got them,—if when he got the two copies of the five copy order, they caused him to go into the siding,—he would not have been killed?

A. I don't know.

Q. If he had gone in there safely somewhere behind number 61, and never gone toward Stilton, you are not able to say whether or not he would have been killed?

A. If he had stayed in Orangeburg he would not have been killed.

Q. If he had acted on the extra precaution he would not have been killed?

A. No, sir, he would not.

Q. What is the purpose of giving him the two copies of the order at Orangeburg?

A. As an extra precaution, but I cannot say whether he would have acted on the extra precaution or not.

Q. That was a meet order and a running order?

A. Yes, sir.

Q. If the meet order had been fulfilled, it was his duty to proceed under the running part of that order?

A. Yes, sir, until it was fulfilled.

Q. It was his duty to run until he fulfilled the running part of it?

A. Yes, sir, that is right.

Q. It was his duty to go into the siding, you said,—if extra 723 was already there, and in the siding, and that was the information he got,—then he had a right to proceed under his running orders?

A. If number 723 had been there he would have had a right to proceed.

[fol. 147] Examination by Mr. Wolfe:

Q. Mr. Youngblood and Mr. Dantzler had copies of this order on their persons?

A. Yes, sir.

Q. But they had no copies of any clearance card beyond Orangeburg?

A. No, sir, not that I have heard of.

Q. Isn't the object of giving the two copies of the order at Orangeburg in this case to the train crew of extra 483, isn't the purpose of that to remind them of the order that had been previously given to them?

A. As an extra precaution, yes.
Q. That is to remind them of it?
A. Yes, sir.
Q. It should have been done?
A. Yes, sir, with a five copy order.
Q. Such as this one?
A. Yes, sir.
Q. This order that has been shown you and which you have heard read in this case is a five copy order?
A. Yes, sir, five copy.

Redirect examination.

By Mr. Blatt:

Q. And if they did not do it, and he had complied with the order that he had, the accident never would have happened?
A. No, sir.
Q. The two extra copies of the order would have been a copy of what he had?
A. Yes, sir.
Q. Is there a block system at Orangeburg?
A. No, sir.

Recross-examination.

By Mr. Brown:

Q. You say that they don't operate trains on verbal orders?
A. No, sir.
Q. Mr. Rogers is the Chief Dispatcher on another division of the road?
A. Yes, sir.
Q. And he is of the same rank as you?
A. Yes, sir.
[fol. 148] Q. And ought to know the rules?
A. Yes, he should know them.
Q. You heard Mr. Rogers say that when Tyson told him that the train was approaching that he told him to tell him to go down beyond the semaphore board and head in on the siding,—is that wrong?

A. That requires an explanation. That was to remind that man that the meeting point he had held at that time would hold good, and would not be done away with by a verbal order.

Q. That was a verbal order?

A. That was not an order.

Q. It was verbal instructions?

A. Yes, sir.

Q. The semaphore board is Orangeburg in railroading?

A. Yes, sir, it is in Orangeburg.

Q. But that is the station?

A. It governs the movement at that station.

Q. You heard Rogers say also that in addition to passing that semaphore board and going beyond it,—that the train did not have any orders at the time,—that he asked him a little afterwards if 483 was there,—when he told him it was, he said that the broken down train at Fort Motte is alright, and has gone on to Columbia on its own power,—you heard Mr. Rogers say that?

A. There is no connection at all with those instructions and a train order.

Q. All of you have testified that you could not change a train order except by writing?

A. Yes, sir.

Q. When you stop a train that is running on a train order, and tell him to go somewhere else, that is not changing it, you say?

A. His train order would have been annulled. That order remained in effect until it was annulled, and he could not go to Andrews and come back unless he got a renewed order to do so.

Q. Under the circumstances as have come out in this [fol. 149] case,—Youngblood had instructions to pass the semaphore board at Orangeburg?

A. Yes, sir.

Q. You heard Rogers say that he told Tyson verbally to tell them to proceed to the east end of the siding?

A. Yes, sir.

Q. Which was in the territory of extra train number 723 that had no orders?

A. Yes, sir.

Q. What was the necessity of giving train 723 any orders at all,—if the other train was going to be in the side track, and out of the way when number 723 got there?

A. It is impossible to say that number 723 would ever have gotten there. His engine may have broken down or something of the kind.

Q. These two copies of the order went to the first train that got there?

A. Yes, sir, you are right.

Q. And it depended on which one got there first as to which one went into the siding?

A. Yes, sir.

Redirect examination.

By Mr. Blatt:

Q. It was necessary to give number 723 the train order?

A. Yes, sir.

Q. When they reached Orangeburg it was necessary to give them the two copies of the order?

A. Yes, it was.

C. P. KING, a witness for the defendants, sworn, testified as follows:

Direct examination.

By Mr. Harley:

I am Superintendent of the Southern Railway on the Charleston Division, and have been for thirteen years. There are 440 miles in that division. It is from Charleston to Columbia, and Charleston to Augusta, and Kingville to Marion, North Carolina. I was employed first by the Mexi- [fol. 150] can National Railway in 1887, and have worked for railroads ever since. I have held the positions of Brakeman, Conductor, Train Master, and Train Superintendent. When I was first a brakeman I had to study the rules of the Company. I have never been an engineer.

Q. A Conductor must know the rules?

A. Yes, sir, absolutely.

Q. You remember about this accident, do you not?

A. Yes, sir.

Q. Where were you on the morning of the accident?

A. At Branchville.

Q. What time did you go to Branchville?

A. I left Charleston at three o'clock, and got to Branchville at about 4:45 that morning.

Q. What was your reason for going to Branchville so early in the morning?

A. I couldn't say. I was either going on the Augusta side or on the Orangeburg side, but I don't know. I was going over the road.

Q. You were going over the various routes as Superintendent?

A. Yes, sir.

Q. You remember when this order was put out to extra 483 at Branchville?

A. Yes, sir.

Q. You were in Branchville at the time?

A. In the telegraph office, yes, sir.

Q. Did you see the train crew?

A. I saw the engineer and fireman before I went in the office, and the conductor was in the office, and I went in and he came out. He was signing his orders when I walked into the telegraph office.

Q. That was there in Branchville?

A. Yes, sir, and I asked him where he was going for 723, and he said to Orangeburg, and I said get away from here and don't delay that man any more than you can help as he will never get in.

[fol. 151] Q. Was 723 an eastbound train?

A. Yes, sir, and I get a report from the dispatcher every morning at six o'clock.

Q. You were at Branchville when the engine left?

A. Yes, sir.

Q. What trains did that engine pass before it reached Orangeburg that morning?

A. I don't know.

Q. When did you hear of the accident?

A. Around 9:30 or 9:45. I had been down in the yard, and had gone back to the room, and was shaving, and they brought a message to me that they had collided.

Q. You went to the wreck at once?

A. In an automobile, yes, sir.

Q. Under that order there, and under the rules of the Company, what should Conductor Youngblood have done when he reached Orangeburg?

A. Carried out the instructions.

Q. What were they?

A. To meet 723 there.

Q. When he went to Orangeburg and gave four blasts of the whistle for the semaphore, and the semaphore was dropped, meaning clear, and he passed,—what should he have done under that order?

A. Headed in at the east passing track switch, or if it was blocked he could go on under the yard limit rule to the west end and back in.

Q. Now, suppose agent Tyson had a five copy order, instead of three,—two of which was to go to the crew of extra 723 and two of which was to go to Dantzler and Youngblood, —would that have made any difference?

A. It would have given them an additional copy of the order in their possession which they had signed for already, and run under from Branchville to Orangeburg.

Q. It would have given them an exact copy of the order that they already had?

A. Yes, sir, except it would be headed at Orangeburg [fol. 152] instead of Branchville.

Q. But the instructions would have been the same as the order they had?

A. Yes, sir.

Q. Now, Mr. King, this order had not been fulfilled?

A. No, it had not.

Q. Nor was it fulfilled?

A. No, sir, it never was.

Q. When was that order fulfilled?

A. When 723 cleared at Orangeburg. The second paragraph would not have been fulfilled until they arrived at Andrews yard as directed.

Q. It had never been annulled?

A. No, sir, or superseded. There is no record of it in the dispatcher's office.

Q. So, it had not been fulfilled, annulled or superseded?

A. It had not.

Q. Now, an engineer approaching the semaphore board, and it is dropped, and it is given clear board,—what does that mean?

A. That they have no orders for him, and to proceed on his orders or on his time tables.

Q. Which train was superior?

A. East-bound train.

Q. That is number 723?

A. Yes, sir.

Q. Train 723 being superior,—under your rules, and under your time tables, 483 should have gone into the siding at Orangeburg anyway?

A. Yes, sir.

Q. By reason of the fact that it was an inferior train of the same class?

A. Yes, sir.

Q. What is that book (indicating to witness)?

A. Rule book.

Q. Look at rule number 221?

A. Yes, sir, here it is.

Q. What is that?

A. It is a rule governing the operation of the semaphore board, and affects signals and handling train orders.

[fol. 153] Q. What is rule number 93?

A. The yard limit rule.

Q. There was a yard limit rule in effect at Orangeburg at that time?

A. Yes, sir.

Q. Read it?

A. That says "within yard limits the main track may be used without protecting against second and inferior class trains. Second and inferior class and extra trains or engines must move within yard limits prepared to stop unless the main track is seen or known to be clear. When the view is obstructed additional precautions must be taken. In case of accident the responsibility will rest with the approaching train."

Q. Now, that is rule 93 in the rule book?

A. Yes, sir.

Q. Then, what was conductor Youngblood's duty under the yard limit rule?

A. He had a perfect right under that yard limit rule to occupy the main line to the west end of the passing track

and back in, or he had a perfect right to go to the yard limit running at such speed as he could stop in half the distance he could see. Or, if he had cars and it was necessary to go out, he had a right to go to the yard limit board west of Orangeburg, which is about two thousand feet west of the west passing track.

Q. There was number 61 at Orangeburg, when this train passed?

A. Yes, sir.

Q. Was that east or west bound?

A. West bound.

Q. That was a local train?

A. Yes, sir, local.

Q. The east end of the passing track begins about seventy-five yards west of the depot?

A. Yes, sir.

Q. And of the semaphore?

A. Yes, sir.

Q. And is about one mile long?

A. That is correct.

Q. And is used for trains to pass?

A. Except in cases of emergency it is never blocked.

[fol. 154] Q. On the east side of the depot is Russell Street?

A. Yes, sir.

Q. About one hundred and fifty feet from the depot?

A. Yes, sir, it is up against the passenger station.

Q. The station is right on Russell Street?

A. Yes, sir.

Q. You received instructions from town authorities to flag that Street, I believe?

A. We did.

Q. If a flagman was not there, then some member of the crew must flag it across the Street?

A. Yes, sir.

Q. You received those instructions?

A. There is a City Ordinance to that effect.

Q. This wreck resulted in the death of two?

A. Engineer Brown, Conductor Ulrich, and Fireman Hopkins, and Youngblood and Dantzler.

Q. That is five in all?

A. Yes, sir.

Q. As to the claims of Conductor Ulrich and Engineer Brown, and Fireman Hopkins,—those claims were settled at once?

Mr. Wolfe: We object to that. It has nothing at all to do with this case.

Mr. Brown: Let them put that in, and also that they have paid Witherspoon, and that he is here testifying for them now.

Mr. Harley (continuing):

Q. You paid the claims of these folks?

A. Yes, sir.

Q. This train number 61,—the local freight,—was going in the same direction as number 483?

A. Yes, sir.

Q. That was a local freight?

A. Yes, sir.

Q. It was in the passing track at Orangeburg?

A. I understood so.

[fol. 155] Cross-examination.

By Mr. Wolfe:

Q. Just a few questions, Mr. King,—Conductor Youngblood had worked for you quite awhile?

A. He had worked for me about thirteen years, and he was with the company before I was sent there. He had been with me ever since I had been there.

Q. That is on the Charleston division?

A. Yes, sir.

Q. About what salary was he paid the last year?

A. I have them here somewhere.

Q. You stated before that it was approximately twenty-four hundred dollars?

A. In 1923, we paid $2,333.07.

Q. What is the highest price engineer you have on that division,—give your opinion,—including over-time?

A. Engineers are allowed to make $296.00 per month, and then they come off, and the extra man is given a chance, but I should say that their average is around $275.00 per month as an average.

Q. That semaphore board we have been talking about relates to the main track only?

A. Yes, sir.

Q. I believe that is found in rule number 221?

A. Yes, sir.

Q. And I ask you to read that,—read this rule number 221 to the Court and jury?

A. It says "a fixed signal must be used at each train order office, which shall indicate "stop" when there is an operator on duty except when changed to indicate "19" train order or to "proceed" to allow a train to pass for which there are no orders. It must not be changed to "proceed" for a train while train order remains undelivered for a train in that direction. A train must not pass a train order signal while "stop" or "approach with caution" is [fol. 156] indicated without receiving clearance card Form 603 (and train orders, if any) except to do station work or to reach entrance to the siding under proper protection; in such cases it must not proceed or again occupy the main track without receiving clearance card form 603 or form 886."

Q. So that semaphore board relates to the main track only?

A. Yes, sir.

Q. Therefore, the semaphore board, or the train order board, is not used to give signals with reference to sidings?

A. What did I answer before?

Q. That it only governs train orders?

A. Yes, sir, that is correct.

Q. Now, if the words "and operator" had been in the message it would have been a five copy order?

A. The dispatchers in making copies, say copy five, and copy three, etc., and the words "and operator" would indicate that he intended to make a five copy order.

Q. If the words "and operator" had been in that particular message, and it had been a five copy order, the operator at Orangeburg would have had orders for train number 483, wouldn't he?

A. Yes, sir, he would have had a middle order.

Q. If he had had two copies of that for the crew of number 483, or a middle order such as that is intended to be, he could not have dropped the board at Orangeburg?

A. He should not.

Q. You say he should not?

A. Yes, sir.

Q. Extra train number 723 that was coming east,—that was a through freight?

A. Yes, sir, what we term one.

Q. Orangeburg is a place of some importance?

A. Yes, sir.

Q. And through freights have some local work to do?

A. Yes, sir.

[fol. 157] Q. Practically all of them do work there?

A. Yes, sir, they set off or pick up cars at Orangeburg very often.

Q. And when they do that, that is called local work?

A. Yes, sir.

STIPULATION AS TO RULE BOOK

It is stipulated and agreed by counsel that the rule book effective August 1st, 1923, is offered in evidence, and it is agreed that counsel be permitted to use or to refer to any rule therein that is or may be deemed pertinent and useful to them in the case.

The defendants close.

DEFENDANTS' MOTION TO DIRECT A VERDICT.

The defendants move for direction of a verdict in their favor upon the following grounds:

1. That the only reasonable inference to be drawn from the entire testimony is that the death of the plaintiff's intestate was caused solely by his own negligence and recklessness.

2. That the entire testimony is susceptible of but one reasonable inference, namely, that the danger of the situation resulting in the death of plaintiff's intestate was so obvious that an ordinarily careful person would have

observed and appreciated the same, and hence plaintiff's intestate assumed the risks thereof.

3. That the only reasonable inference to be drawn from the entire testimony is that the proximate cause of the injuries resulting in the death of plaintiff's intestate was [fol. 158] the intestate's own violation of a positive meet order, which he had in his possession, not fulfilled, superseded or annulled.

4. That there is no evidence of actionable negligence on the part of the defendants.

5. That there is no evidence as to pecuniary loss sustained by the beneficiaries named in the complaint, as the result of the death of plaintiff's intestate, and hence no evidence upon which to base an award of damages.

The Court: I will have to refuse the motion, Mr. Harley.

GROUNDS OF DEFENDANTS' MOTION FOR A NEW TRIAL

1. There is no testimony, much less a preponderance of the testimony, showing negligence of the defendants as alleged in the complaint.

2. The evidence shows that the injuries resulting in the death of plaintiff's intestate were caused by the intestate's own negligence in violating a positive meet order which he had in his possession, which negligence of the plaintiff's intestate was the proximate cause of his death, and without which negligence on the part of plaintiff's infestate the accident resulting in his death would not have happened.

3. The entire evidence shows that the injuries resulting in the death of plaintiff's intestate were caused by the intestate's own negligence in violating, among other rules of the [fol. 159] defendants, rule number 88, in that plaintiff's intestate failed to have his engine take the siding at Orangeburg, the meeting point, and await the arrival of extra 723, as he was required to do in accordance with the said rule and the order under which his engine was being run, which negligence on the part of plaintiff's intestate was the proximate cause of his death, and without which negligence the acci-

dent resulting in the death of plaintiff's intestate would not have happened.

4. That there was no evidence in the case as to the pecuniary value of the intestate's customary contributions to the support of the beneficiaries named in the complaint, nor that said beneficiaries had a reasonable expectation of pecuniary benefit from a continuance of decedent's life, and hence no evidence on which to base an award of damages in the event the jury found that the plaintiff was entitled to a recovery.

5. That the verdict is grossly excessive, and contrary to the great weight of the evidence.

The Court: The motion is refused.

Exhibits

Consist of Extra Train Number 683

The following is the consist of extra train number 683, which became disabled at Fort Motte, S. C., on morning of January 3, 1924; said consist showing that said train contained twenty-four cars of freight destined from points in South Carolina to points outside of South Carolina:

[fol. 160]

Car initial	No.	Kind	Contained	From	To
Southern	X-2599	Cab			
"	154278	Coal	Iron	Charleston, S. C	Chattanooga, Tenn.
"	158570	Box	Mdse	"	Spencer, N. C., Trans
"	150214	"	"	"	Columbia, S. C.
"	17106	"	"	"	Hayne, S. C., Trans
"	253922	"	"	"	Blythewood, S. C. & W.
Sou. Pac.	36847	"	"	"	Peak, S. C. & Way
Southern	265808	"	"	"	S. U. R. R.
P. M.	18285	"	"	"	Belton, S. C. & Way
N. Y. C.	220069	"	"	"	Johnston, S. C.
Southern	265250	"	Soda	"	Jonesville, S. C.
L. A.	2062	"	Sweepings	"	Shoals Jct., S. C.
I. C.	331380	"	"	"	Shoals Jct., S. C.
C. A.	36854	"	Soda	"	Union, S. C.
Southern	302670	"	"	"	Gaffney, S. C.
"	304657	"	Mdse	"	Columbia, S. C.
A. C. L.	44166	"	Paper	"	Birmingham, Ala.
Southern	15978	"	Mdse	"	Memphis, Tenn.
"	265383	"	"	"	Atlanta, Ga.
"	122827	"	"	"	Chattanooga, Tenn.
"	304438	"	"	"	Little Rock, Ark.
"	26752	"	"	"	Meridian, Miss.
"	260074	"	"	"	Selma, Ala.

Southern	150851	"	.....	"	.....	"	..... Ft. Smith, Ark.
"	152343	"	.....	"	.....	"	..... Memphis, Tenn.
"	150619	"	.....	"	.....	"	..... Birmingham, Ala.
"	153954	"	.....	"	.....	"	..... Knoxville, Tenn.
"	89728	"	.....	"	.....	"	..... Nashville, Tenn.
"	150135	"	.....	"	.....	"	..... Spartanburg, S. C.
"	15191	"	.....	"	.....	"	..... Wateree, S. C. & Way
"	265811	"	.....	Cabbage	.....	"	..... Columbia, S. C.
"	27179	"	.....	"	.....	"	..... Roanoke, Va.
"	28125	"	.....	"	.....	"	..... Winston-Salem, N. C.
"	35635	"	.....	"	.....	"	..... Concord, N. C.
S. O. R. D	7911	"	.....	"	.....	"	..... West Phila., Pa.
Southern	122987	"	.....	"	.....	"	..... Reidsville, N. C.
S. O. R. D.	7239	"	.....	"	.....	"	..... New York, N. Y.
Southern	28608	"	.....	"	.....	"	..... Greensboro, N. C.
"	27806	"	.....	"	.....	"	..... Charlotte, N. C.
N. G.	69994	Flat	.....	Logs	.....	Branchville, S. C	..... Cayce, S. C.
Southern	160629	Box	.....	Mdse	.....	"	..... Columbia, S. C. & Way
"	305194	"	.....	Sweepings	.....	"	..... Bessemer City, N. C.
"	116350	Flat	.....	Lumber	.....	"	..... Pittsburgh, Pa.
D. L. & S.	32244	Box	.....	"	.....	"	..... Columbia, S. C.
B. O.	75042	"	.....	"	.....	"	..... Williamston, S. C.
N. Y. C	48309	"	.....	"	.....	"	..... Marion, S. C.
Southern	415644	Flat	.....	"	.....	"	..... Pleasantville, S. C.
"	121500	Box	.....	Phosphate	.....	"	..... Greenwood, S. C.
"	415573	Flat	.....	Poles	.....	"	..... Anderson, S. C.

[fol. 161] TRAIN ORDER NUMBER 18

Train order number 18, dated January 3, 1924, addressed to Engine 483, Branchville, S. C., is as follows:

"Extra 723 get this order meet extra 483 east at Orangeburg Engine 483 run extra Branchville to Andrews";

said order having been signed for by Conductor Youngblood, at Branchville, S. C., at 8:32 A. M., January 3, 1924, and copies of said order being found on the bodies of Conductor Youngblood and Engineer Dantzler when they were extricated from the wreck.

ORDER NUMBER 18.

Order number 18, sent at 7:58 A. M., January 3, 1924, the same being copied in the train-order book used at Charleston, S. C., is as follows:

"Jd Exa 723 East & Opr 31
Bv Eng 483
Exa. 723 East get this order & meet Ex 483 West at Orgburg Eng 483 run extra Bchville to Andrews."

CLEARANCE CARD

3-6-23 3500 M D 3121 Form 603

Southern Railway System

Clearance Card

Branchville, S. C., 1-3, 1924.

Conductor and Engineer No X 483:
Orders for your train are: Form "19", None; Form "31", 1-3-18-32. Block is O. K. 8:31 A. M. Von Lehe, Operator.
C Y'blood, Conductor, —— ——, Engineer.

[fol. 162] If no orders For "19" or "31," endorse "NONE" in spaces provided for order numbers.

Conductors must sign orders (Form 31) before accepting from Operator; also sign this receipt, and obtain receipt from Engineer when orders are delivered to him. Conductors and Engineers must each have copy, and see that train is correctly designated in above form. When a train has been stopped by semaphore signal, whether for orders, block, or both, this card will be issued in lieu of giving a clear semaphore signal. This card must be made in triplicate.

RECEIPT FOR NEW RULE BOOK

Receipt signed by C. J. Youngblood, Conductor, dated March 25, 1923, acknowledging receipt of new rule book number 11283, is as follows:

Charleston, S. C., Date 3-27, 1923.

T. D. Beard, Trainmaster, Charleston, S. C.; J. S. Walker, Jr., Trainmaster, Rock Hill, S. C.

I have this date received New Rule Book Number 11283 and will Read and Study the rules contained therein, and have this date returned old rule book Number 33190.

(Signed) C. J. Youngblood.

PLATS

Plat made by E. G. Kittles, dated August 26, 1924, showing tracks, station and surroundings of Southern Railway Company at Orangeburg, S. C., filed separately.

Plat made by E. G. Kittles, dated August 26, 1924, showing tracks, right of way and buildings of Southern Railway Company at Stilton, S. C., filed separately.

[fol. 163] TIME TABLE

The following foot-note appears at the bottom of the Time Table of Southern Railway System on Charleston Division, effective August 1, 1923:

"All regular trains from Columbia to West End are superior to trains of the same class moving in opposite direction, in accordance with General Rule 72."

RULES

From preface to rule book under heading "General Notice":

"Safety is of the first importance in the discharge of duty.

"Obedience to the rules is essential to safety."

From "General Rules," page 6 of Rule Book:

"B. Employes must be conversant with and obey the rules and special instructions. If in doubt as to their meaning they must apply to proper authority for an explanation."

From "Definitions," page 7 of Rule Book:

Extra Train.—a train not authorized by a time-table schedule. It may be designated as—

Extra—for any extra train, except work extra;

Work extra—for work train extra.

Superior Train.—A train having precedence over another train.

Train of Superior Direction.—A train given precedence in the direction specified by time-table as between opposing trains of the same class.

From "Definitions," page 8 of Rule Book:

Siding.—A track auxiliary to the main track for meeting [fol. 164] or passing trains.

Fixed Signal.—A signal of fixed location indicating a condition affecting the movement of a train.

Note.—The definition of a "Fixed Signal" covers such signals as slow boards, stop boards, yard limits, switch, train order, block, interlocking, semaphore, disc, ball or other means of displaying indications that govern the movement of a train.

RULES 71, 72 AND 73, PAGE 27 OF RULE BOOK

71. A train is superior to another train by right, class or direction.

Right is conferred by train order; class and direction by time-table.

Right is superior to class or direction.

Direction is superior as between trains of the same class.

72. Trains of the first class are superior to those of the second; trains of the second class are superior to those of the third; and so on.

Trains in the direction specified by the time-table are superior to trains of the same class in the opposite direction.

73. Extra trains are inferior to regular trains.

RULES 83 AND 87, PAGE 28 OF RULE BOOK

83. A train must not leave its initial station on any division, or a junction, or pass from double to single track, until it has been ascertained whether all trains due, which are superior, or of the same class, have arrived or left.

Stations at which train registers are located may be designated by time table.

[fol. 165] 87. An inferior train must keep out of the way of opposing superior trains and failing to clear the main track by the time required by rule must be protected as prescribed by Rule 99.

Extra trains must clear the time of opposing regular trains not less than five minutes unless otherwise provided, and will be governed by train orders with respect to opposing extra trains.

RULES 88 AND 90, PAGE 29 OF RULE BOOK

88. At meeting points between trains of the same class, the inferior train must clear the main track before the leaving time of the superior train.

At meeting points between extra trains, the train in the inferior time-table direction must take the siding unless otherwise provided.

Trains must pull into the siding when practicable; if necessary to back in, the train must first be protected as prescribed by Rule 99, unless otherwise provided.

90. Trains must stop at schedule meeting points, if the train to be met is of the same class unless the switch is right and the track clear.

When the expected train of the same class is not found at the schedule meeting point, the superior train must approach all sidings prepared to stop, unless the expected train is met.

Trains must stop clear of the switch used by the train to be met in going on the siding; at the end of double track unless otherwise provided, the double track junction switch is the designated switch.

The Conductor must give signal 16 (*m*) on a passenger train or signal 12 (*b*) on other trains which must be answered by the engineman by signal 14 (*g*) at least one [fol. 166] mile before reaching a schedule meeting or passing point with a train of the same or superior class, or a point where by train order the train is to meet or wait for an opposing train. Should the conductor or the engineman fail to give the prescribed signals the train must be stopped.

On any train the engine number is an additional but not a complete identification of the train.

RULE 93, PAGE 30 OF RULE BOOK

93. Within yard limits the main track may be used without protecting against second and inferior class trains. Second and inferior class and extra trains or engines must move within yard limits prepared to stop unless the main track is seen or known to be clear. When the view is obstructed additional precautions must be taken. In case of accident the responsibility will rest with the approaching train.

NOTE.—Yard limits are indicated by sign boards reading "Yard Limit," and the locations are also shown for each division in the current time table.

RULE 97, PAGE 31 OF RULE BOOK

97. Extra trains must not be run without train orders.

Rule 105, Page 34 of Rule Book

105. Both the conductor and the engineman are responsible for the safety of the train and the observance of the rules, and, under conditions not provided for by the rules, must take every precaution for protection. When two or more engines are attached to a train each engine- [fol. 167] man must have copy of the train orders and each will be responsible for observance of the rules.

Rule 201, Page 36 of Rule Book

201. For movements not provided for by time-table, train orders will be issued by authority and over the signature of the chief dispatcher. They must contain neither information nor instruction not essential to such movements.

They must be brief and clear; in the prescribed forms when practicable; and without erasure, alteration or interlineation.

Figures in train orders must not be surrounded by brackets, circles or other characters.

Train orders must be written by hand and not by typewriter.

Rule 208, Pages 37 and 38 of Rule Book

208. A train order to be sent to two or more offices must be transmitted simultaneously to as many of them as practicable. When not sent simultaneously to all, the order must be sent first to the superior train.

The several addresses must be in the order of superiority of trains, each office taking its proper address, and when practicable must include the operator at the meeting or waiting point.

Copies of the order addressed to the operator at the meeting or waiting point must be delivered to the trains affected until all have arrived from one direction.

A train order must not be sent to a superior train at the meeting point if it can be avoided. When an order is so [fol. 168] sent, the fact will be stated in the order and special precautions must be taken to insure safety.

RULE 210, PAGES 38 AND 39 OF RULE BOOK

210. When a "31" train order has been transmitted, operators must, unless otherwise directed, repeat it at once from the manifold copy in the succession in which the several offices have been addressed, and then write the time of repetition on the order. Each operator receiving the order must observe whether the others repeat correctly, and must at once call attention to any discrepancy.

Those to whom the order is addressed, except enginemen, must then sign it, and the operator will send their signatures preceded by the number of the order to the train dispatcher. The response "complete," and the time, with the initials of the chief dispatcher, will then be given by the train dispatcher. Each operator receiving this response will then write on each copy the word "complete," the time, and his last name in full, and then deliver a copy to each person addressed, except enginemen. The copy for each engineman must be delivered to him personally by the conductor who will take receipt on Form 603 for orders delivered. The engineman must read the orders aloud to the conductor.

A pilot will sign "31" train orders and personally deliver them to the conductor and engineman.

Enginemen must show train orders to firemen and when practicable to forward trainmen. Conductors must show train orders when practicable to trainmen. Firemen and trainmen must, when necessary, call attention of conductors and enginemen to the instructions in the orders.

[fol. 169] RULES 219 AND 220, PAGES 41 AND 42 OF RULE BOOK

219. An operator must not repeat or give the "X" response to a train order for a train which has been cleared or of which the engine has passed his train-order signal until he has obtained the signatures of the conductor and engineman to the order.

220. Train orders once in effect continue so until fulfilled, superseded or annulled. Any part of an order specifying a particular movement may be either superseded or annulled.

Orders held by or issued for or any part of an order relating to a regular train become void when such train loses both right and schedule as prescribed by rules 4 and 82, or is annulled.

When a conductor or engineman, or both, is relieved before the completion of a trip, all train orders and instructions held must be delivered to the relieving conductor or engineman. Such orders or instructions must be compared by the conductor and engineman before proceeding.

RULE 221, PAGE 42 OF RULE BOOK

221. A fixed signal must be used at each train order office, which shall indicate "stop" when there is an operator on duty except when changed to indicate "19" train order or to "proceed" to allow a train to pass for which there are no orders. It must not be changed to "proceed" for a train while a train order remains undelivered for a train in that direction. A train must not pass a train order signed while "stop" or "approach with caution" is indicated without receiving clearance card Form 603 (and train orders, if any), except to do station work or to reach en- [fol. 170] trance to the siding under proper protection; in such cases it must not proceed or again occupy the main track without receiving clearance card Form 603 or Form 886.

When the signal is changed to "proceed" to allow a train to pass, it must be in full view of engineman and must be returned to "stop" as soon as train has passed. It must be fastened at "proceed" only when no operator is on duty.

Indications of train order signal apply only to main track, and trains passing the signal while on siding or yard track must obtain clearance card before proceeding.

Operators must have the proper appliances for hand signaling ready for immediate use if the fixed signal should fail to work properly. If a signal is not displayed at a night office, trains which have not been notified must stop and ascertain the cause, and report the facts to the chief dispatcher from the next available point of communication.

Where the semaphore is used, the governing arm is displayed to the right of the mast as seen from an approaching train.

On double track the train order signal governing a train when moving with the current of traffic, will govern it when moving on a main track against the current of traffic.

"Approach with Caution" signal must not be displayed if the order requires the train to stop at that station; in such case Stop must be displayed.

At Stations where a fixed signal is not provided a red flag by day and in addition a red light by night will be displayed when trains are to be stopped for train orders.

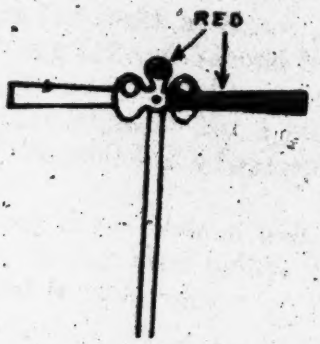
(Here follows reproduction of side folio 171.)

FROM PAGE 46 OF RULE BOOK.

TWO POSITION TRAIN ORDER SIGNALS.

The following signals will appear where conditions require their use.

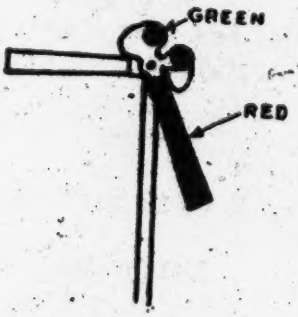
221 e



INDICATION—STOP
NAME—STOP-SIGNAL.

Note.—Delivery of "19" order may be indicated by display in addition of yellow signal by the operator.

221 f



INDICATION—PROCEED.
NAME—CLEAR-SIGNAL.

[fol. 172] FORMS OF TRAIN ORDERS

Page 48 of Rule Book

A

Fixing Meeting Points for Opposing Trains

(1.) No. 1 one eng 111 meet No. 2 two eng 112 at B. No. 3 three eng 113 meet Second No. 4 four eng. 114 at B. No. 5 five eng 115 meet Extra 116 east at B. Extra 117 north meet Extra 118 south at B.

(2.) No. 2 two eng 112 and Second No. 4 four eng 114 meet No. 1 one eng 111 and No. 3 three eng 113 at C and Extra 123 west at D (and so on). No. 1 one eng 111 meet No. 2 two eng 112 at B Second No. 4 four eng 114 at C and Extra 127 east at D.

Trains receiving these orders will run with respect to each other to the destignated points and there meet in the manner prescribed by the rules.

Page 54 of Rule Book

G

Extra Trains

(1.) Eng 99 run extra A to F.

(2.) Eng 99 run extra A to F and return to C. The extra must go to F before returning to C.

FORM 603, PAGE 62 OF RULE BOOK

Form 603.

Southern Railway System

Clearance Card

Orders for your train are: { For "19" No's ..... / For "31" No's ..... }

[fol. 173]

Conductor / Engineman } No. ..... Block is .....

.....

.....M. .....,Operator

.....Conductor ..... Engineman

When a proceed signal cannot be given this form must be made in triplicate and two copies delivered to conductor who must see that his train is correctly designated. Form must be endorsed with one or more of the following: "None," "Clear," "Obstructed by ——," "Line has failed, proceed with caution," "Route is set, proceed," "Signal has failed, proceed" and if any train orders, the numbers. Enginemen receiving this card endorsed "Line has failed, proceed with caution" must deliver it to the signalman at the next block station.

RULE 282, PAGE 64 OF RULE BOOK

282. The movement of trains will be supervised by the chief dispatcher, who will issue instructions to the signalmen or operators.

RULE 513, PAGE 108 OF RULE BOOK

513. Approaching meeting points made by train order, the train to take siding may, after stopping, pass the stop signal immediately preceding the meeting point and proceed under control to the entrance switch of siding.

RULE 890, PAGE 130 OF RULE BOOK

Train Dispatchers

890. Train dispatchers will report to chief dispatcher.

[fol. 174] RULES 891, 1065, AND 1066, PAGE 131 OF RULE BOOK

Train Dispatchers

891. They must issue train orders over the signature of the chief dispatcher and in accordance with the rules. They must take additional precautions when necessary for the safe movement of trains.

When Signals for a following section are displayed from or taken down at a non-register station, proper notice must be given other trains affected.

Maintenance of Way Department

Roadmasters must not permit encroachment upon, or occupancy of any portion of the property, except by proper authority, and shall report such cases to the superintendent.

Supervisors must know that foremen are provided with current time tables, rules, circulars and orders, affecting train service and that they comply with them.

Employes must be prepared for trains at any time as notice is not given in advance of extra trains; they must observe passing trains for signals displayed.

Employees authorized to use lever, motor or push cars must limit their use to authorized service and must not permit any one except employes in the performance of duty to use them.

Telegraph and Telephone Operators

1065. Telegraph and Telephone Operators will report to the Chief Dispatcher, except in relay offices they will report to the Manager.

1066. They will obey the instructions of the station agent with respect to any duties required of them in connection [fol. 175] with station work, but must not allow such duties to interfere with their duties as operators. The telegraph and telephone service must be regarded as of the first importance.

RULES 1067 AND 1068, PAGE 132 OF RULE BOOK

Telegraph and Telephone Operators

1067. They must be constantly on duty during the hours of service as required or assigned by the chief dispatcher

and must not close their office without permission of the train dispatcher.

1068. They must make written transfer to the relieving operator of undelivered train orders or unfinished business.

RULE 1137, PAGE 133 OF RULE BOOK

Conductors

1137. They must recognize the joint responsibility of enginemen for the observance of the rules and must consult with them in regard to the safe movement of the train. (See Rule 1293.)

RULE 1293, PAGE 147 OF RULE BOOK

Enginemen

1293. They are jointly responsible with the conductor for the safe movement of the train and must decline to obey instructions which involve violation of the rules, or peril to persons or property. They are solely responsible for the observance of and compliance with the indications given by fixed signals, flagmen's signals or other signals affecting head end forward train movement; the responsi- [fol. 176] bility of the conductor in such cases is to secure compliance to the extent of his ability with the indications of the signals after they come into his view and according to the prescribed method of operation of fixed signals.

IN COURT OF COMMON PLEAS OF BARNWELL COUNTY

Within due time the defendants served notice of intention to appeal to the Supreme Court of South Carolina, and now ask this Court to reverse the verdict and judgment herein upon the following

Exceptions

1. Because his Honor erred, it is respectfully submitted, in overruling the motion for direction of verdict in favor of defendants, upon the grounds:

(a) That the only reasonable inference to be drawn from the entire testimony is that the death of the plaintiff's intestate was caused solely by his own negligence and recklessness.

(b) That the entire testimony is susceptible of but one reasonable inference, namely, that the danger of the situation resulting in the death of plaintiff's intestate was so obvious that an ordinarily careful person would have observed and appreciated the same, and hence plaintiff's intestate assumed the risks thereof.

(c) That the only reasonable inference to be drawn from the entire testimony is that the proximate cause of the injuries resulting in the death of plaintiff's intestate was the intestate's own violation of a positive meet order, which he had in his possession, not fulfilled, superseded or annulled.

[fol. 177] (d) That there is no evidence of actionable negligence on the part of the defendants.

(e) That there is no evidence as to pecuniary loss sustained by the beneficiaries named in the complaint as the result of the death of plaintiff's intestate, and hence no evidence upon which to base an award of damages.

2. Because his Honor erred, it is respectfully submitted, in refusing defendants' motion for a new trial; whereas he should have granted the motion upon the grounds and for the reasons urged in support thereof, as follows:

(a) There is no testimony, much less a preponderance of the testimony, showing negligence of the defendants as alleged in the complaint.

(b) The evidence shows that the injuries resulting in the death of plaintiff's intestate were caused by the intestate's own negligence in violating a positive meet order which he had in his possession, which negligence of the plaintiff's intestate was the proximate cause of his death, and with-

out which negligence on the part of plaintiff's intestate the accident resulting in his death would not have happened.

(c) The entire evidence shows that the injuries resulting in the death of plaintiff's intestate were caused by the intestate's own negligence in violating, among other rules [fol. 178] of the defendants, rule number 88, in that plaintiff's intestate failed to have his engine take the siding at Orangeburg, the meeting point, and await the arrival of extra 723, as he was required to do in accordance with the said rule and the order under which his engine was being run, which negligence on the part of plaintiff's intestate was the proximate cause of his death, and without which negligence the accident resulting in the death of plaintiff's intestate would not have happened.

(d) That there was no evidence in the case as to the pecuniary value of the intestate's customary contributions to the support of the beneficiaries named in the complaint, nor that said beneficiaries had a reasonable expectation of pecuniary benefit from a continuance of decedent's life, and hence no evidence on which to base an award of damages in the event the jury found that the plaintiff was entitled to a recovery.

(e) That the verdict is grossly excessive, and contrary to the great weight of the evidence.

IN COURT OF COMMON PLEAS OF BARNWELL COUNTY

STIPULATION AS TO CASE, ETC.

It is hereby agreed that the foregoing shall constitute the Case and Exceptions on appeal to the Supreme Court of South Carolina in the cause herein, and that the same, when printed and filed, shall constitute the return herein. It is further agreed that all original exhibits herein, to- [fol. 179] gether with a copy of the rule book of the Southern Railway Company effective August 1, 1923, are filed with the Supreme Court as a part of the case for appeal, to be used by the Court or either counsel as desired in the hearing and determination of the appeal. It is further agreed that the semaphore on the line of the Southern Rail-

way Company at Orangeburg is correctly represented by the pictures appearing on page 46 of the rule book.

Harley & Blatt, Attorneys for Appellants. Wolfe & Wolfe, R. C. Holman, Brown & Bush, Attorneys for Respondent.

[fol. 180] SUPREME COURT OF SOUTH CAROLINA

Case No. 120

MARY O. YOUNGBLOOD, as Administratrix of the Estate of Cleveland J. Youngblood, Deceased, Respondent,

v.

SOUTHERN RAILWAY COMPANY and SOUTHERN RAILWAY—CAROLINA DIVISION, Appellants

Appeal from Barnwell County T. S. Sease, Judge

Affirmed

Harley & Blatt, of Barnwell, and Frank G. Tompkins, of Columbia, for appellants.

Wolfe & Wolfe, of Orangeburg, and R. C. Holman and Brown & Bush, all of Barnwell, for respondent.

OPINION—Filed Dec. 14, 1931

STABLER, J.:

This action for damages was commenced in May, 1924, by the plaintiff, as administratrix of the estate of Cleveland J. Youngblood, deceased, for the alleged wrongful death of her intestate. The undisputed facts show that on the morning of January 3, 1924, Youngblood, who was a train conductor in the employ of the defendants, received fatal injuries resulting from a head-on collision of two of the defendants' trains, about three miles west of the city of Orangeburg. The action was brought and tried under the Federal Employers Liability Act (45 U. S. C. A. Sections 51-59), it being agreed that at the time of the accident Youngblood and the defendants were engaged in inter-state commerce.

The plaintiff alleged, among other things, that the injuries received by her intestate, and resulting in this subsequent death, were due to the negligent acts of the defendants, in that they had incompetent officers and agents to signal and direct the train which Youngblood was operating as conductor, and in that these officers and agents did negligently signal and direct its movements, bringing about the collision which resulted in the injury and death of Youngblood. The defenses interposed were a general denial, contributory negligence, and assumption of risk.

The case was first tried at the March, 1925, term of Court of Common Pleas for Barnwell County, the Hon. W. H. Townsend presiding. A verdict was directed for the defendants, but on appeal to this Court the judgment was reversed and the case remanded for a new trial. 137 S. C. 47, 134 S. E. 660. The case was tried again in June, 1927, the Hon. H. F. Rice presiding. The defendants' motion for a new trial was overruled and the jury found for the plaintiff $35,000.00. On appeal to this Court, the judgment below, because of certain errors of law, was reversed and a new trial ordered. 152 S. C. 265, 149 S. E. 742. The case was tried for the third time in September, 1930, the Hon. T. S. Sease presiding. The defendants again made a motion for a directed verdict which was refused, and the jury found for the plaintiff $12,500.00. A motion for a new trial was also made and refused, and the defendants now come to this Court on appeal.

[fol. 181] The exceptions present two questions: 1. Did the Court err in refusing to direct a verdict for the defendants? 2. Was there error in overruling the motion for a new trial?

The motion for a directed verdict was made upon the following grounds:

"1. That the only reasonable inference to be drawn from the entire testimony is that the death of the plaintiff's intestate was caused solely by his own negligence and recklessness.

"2. That the entire testimony is susceptible of but one reasonable inference, namely, that the danger of the situation resulting in the death of plaintiff's intestate was so obvious that an ordinarily careful person would have ob-

served and appreciated the same, and hence plaintiff's intestate assumed the risks thereof.

"3. That the only reasonable inference to be drawn from the entire testimony is that the proximate cause of the injuries resulting in the death of plaintiff's intestate was the intestate's own violation of a positive meet order, which he had in his possession, not fulfilled, superseded or annulled.

"4. That there is no evidence of actionable negligence on the part of the defendants.

"5. That there is no evidence as to pecuniary loss sustained by the beneficiaries named in the complaint, as the result of the death of plaintiff's intestate, and hence no evidence upon which to base an award of damages."

It is agreed that the testimony offered and admitted at the last trial of the case is practically the same as that offered and received on the first and second trials, and considered by this Court on the first and second appeals. It was held, on those appeals, as will be seen by reference to the decisions, that the evidence was sufficient to take the case to the jury on the question of actionable negligence on the part of the defendants, and this in spite of any contributory negligence on the part of Youngblood. The defendants have asked and received permission to review these decisions. They contend that a careful examination of the testimony discloses that Youngblood's injuries, resulting in his death, were due solely to his own negligence and recklessness, and ask that the Court's holding with regard to this question, on the two former appeals, be overruled, and that a verdict be entered up for the defendants under rule 27.

We do not deem it necessary to review the testimony at length. As we have stated, it is substantially the same as that offered and received on the first and second trials. The Court, in its opinion reported in 137 S. C. 47, in deciding this question, went somewhat fully into the testimony; and what is said there, in reviewing the evidence, is equally applicable here:

"The testimony shows that on the morning of the day of the collision the engine of a freight train going toward

Columbia was disabled at Ft. Motte, a point about 25 miles west of Orangeburg. The company kept a switching crew at Branchville about 18 miles east of Orangeburg, which crew consisted of Youngblood, the conductor, and an engineer and a fireman, and was a night crew. The defendants, through their dispatcher at Charleston, ordered the switching crew to proceed in a westerly direction from Branchville with an engine and tender to carry to Andrews, the company's yards at Columbia, the freight train at Ft. Motte. The train set out from Branchville and operated by Youngblood as conductor was designated as extra 483. At the same time a freight train designated as extra 723 was moving over the same line of road in an easterly direction from Columbia toward Charleston. In view of the [fol. 182] necessity that these two trains should meet and pass each other at some point on the road, the dispatcher at Charleston sent the following order, known in railroad circles as a 31 order, to Branchville and Orangeburg: 'Extra 723, east, gets this order and meets extra 483, west at Orangeburg, engine 483 run extra from Branchville to Andrews.' This order was delivered to Youngblood before he left Branchville.

Rule 208 of the defendants' rule book is as follows:

'A train order to be sent to two or more offices must be transmitted simultaneously to as many of them as practicable. When not sent simultaneously to all, the order must be sent first to the superior train.

'The several addresses must be in the order of superiority of trains, each office taking its proper address, and, when practicable, must include the operator at the meeting or waiting point.

'Copies of the order addressed to the operator at the meeting or waiting point must be delivered to the train affected until all have arrived from one direction.

'A train order must not be sent to a superior train at the meeting point if it can be avoided. When an order is so sent, the fact will be stated in the order, and special precautions must be taken to insure safety.'

The words 'and operator' in an address in a 31 order mean that the operator is to make five copies of the message, one to be kept by him and two to be delivered to the crew of each train. In case the words 'and operator' are omitted, the operator makes but three copies, one copy to

be retained by himself and two to go to the crew of the superior train. There is conflict in the testimony as to the use of the words 'and operator' in the address of the above order, the dispatcher at Charleston asserting that he used them in sending the order, and the copy of the order in his records containing them, while the copy of the order in the records of the operator at Orangeburg does not contain them. It appears that the operator at Orangeburg made only three copies of the order, one for himself and two for the crew of extra 723, which two, however, were never delivered to extra 723 because the collision occurred several miles west of Orangeburg, and before extra 723 reached that city.

Leaving Branchville, extra 483 proceeded in the direction of Orangeburg; and on approaching the station at Orangeburg, within 100 yards of same, the semaphore being held on him, the engineer blew four blasts of the whistle as a signal for directions for the movement of his train. In the meantime, Tyson, operator at Orangeburg, according to his testimony, advised the chief dispatcher at Charleston as to the status of extra 483, and was told by him to clear him (Youngblood), and let him go to the west end of side track or yard at Orangeburg. Rogers, the dispatcher, testified that he told Tyson to clear him (Youngblood), and to tell him to go to the west end pass track and wait on extra 723. For some reason, however, Tyson did nothing except to drop the semaphore. Youngblood then continued with his train in a westerly direction, and soon afterward the wreck occurred.

There is conflict in the testimony as to whether the dropping of the semaphore, the indication of which, according to the defendants' rule book, is 'proceed', indicated to Youngblood that his previous orders had been fulfilled, and that he might proceed to his destination, or merely that the Orangeburg operator had no further orders for him, and [fol. 183] that he should carry out the order he already held by meeting extra 723 at Orangeburg.

The movement of the trains was entirely in the hands of the dispatcher and the operator, who were responsible for the proper movement and signaling thereof. Over these agents of the defendants the conductor had no control, but in fact received his orders from them.

• • • There was testimony tending to show negligence on the part of the defendants in the matter of signaling and directing the movement of the trains in question. The meet order being sent to the superior train at the meeting point, a situation arose, which under the defendants' rule, required special precautions to insure safety. A question of negligence on the part of the defendants arises in connection with the sending of the meet order by the dispatcher at Charleston or its disregard by the operator at Orangeburg. The operator at Orangeburg also failed to stop the train and give the crew the verbal instructions which the dispatcher at Charleston testified that he had directed him to give. Hence we are of the opinion that, in spite of any contributory negligence on the part of the deceased, Youngblood, the whole matter should have been submitted to the jury for their determination."

We are still of opinion, after another careful examination of the testimony, that there was substantial evidence to take the case to the jury on the question of actionable negligence on the part of the defendants as a proximate cause of the injuries and death of Youngblood. We, therefore, conclude that the trial Court properly overruled the defendants' motion for a directed verdict made upon the first four grounds above set out.

With regard to the fifth ground, counsel for the defendants contend that, as the mortuary tables were not introduced in evidence, the jury had no way of determining how long plaintiff's intestate would probably have lived, although the life expectancy of the intestate and of the beneficiaries was an indispensable factor in computing the amount of the reasonably expected pecuniary benefits.

While the testimony on this point is not quite as full as it might have been, the evidence is undisputed that Youngblood was thirty-nine years old and in good health at the time of his death; that at that time and prior thereto he was in the employ of the defendants and that he received from them as compensation for his services about $2,300.00 or $2,400.00 a year; that he left a wife and six children, for whose benefit this action was brought, their names and ages being also testified to. The evidence further showed that the intestate and his wife and children were living together, and that the wife and children were dependent

upon and were supported by him. This evidence, we think, was sufficient to take the case to the jury on this point, and to enable them to determine and fix the amount which the beneficiaries might reasonably expect the intestate to contribute toward their pecuniary support. It was unnecessary to introduce the mortuary tables in evidence, if there was other evidence, though circumstantial, from which the jury might determine and fix the amount of reasonably expected pecuniary benefits.

The grounds of the motion for a new trial were the same as those of the motion for a directed verdict, with the additional ground: "That the verdict is grossly excessive, and contrary to the great weight of the evidence." From what we have said in disposing of the alleged error on the part of the trial Court in refusing to grant a directed verdict, it is evident that the trial Judge committed no error in denying the motion for a new trial, unless in overruling the [fol. 184] additional ground above set out. Counsel for appellants, however, have not argued or pressed the question made by this ground; and we apprehend that, even if they had, it could not be sustained under the decisions of this Court.

The exceptions are overruled and the judgment below is affirmed.

Blease, C. J., Carter, and Bonham, JJ., concur. Cothran, J., did not participate on account of illness.

[fols. 185 & 186] Bond on petition for certiorari for $500.00 approved; omitted in printing.

[fol. 187] IN SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

PETITION FOR STAY OF EXECUTION

To the Honorable Jesse F. Carter, Associate Justice of the Supreme Court of South Carolina:

The petition of Southern Railway Company and Southern Railway-Carolina Division respectfully shows:

1. That the final judgment of the Supreme Court in South Carolina in the above stated cause against your petitioners

was rendered on December 14th, 1931, by an opinion affirming the judgment of the Court below.

2. That the said final judgment is subject to review by the Supreme Court of the United States on Writ of Certiorari, upon the grounds that the said final judgment denies to your petitioners rights, privileges and immunities granted to them under the Constitution of the United States and deprives them of their property without due process of law, and denies to them the equal protection of the laws under the Constitution of the State of South Carolina and of the United States.

3. Your petitioners further present that the cause of action herein arises solely under the Act of Congress and Acts amendatory thereto commonly known as the Federal Employers' Liability Act, under which all questions of liability are finally determinable only by the Supreme Court of the United States, which has ultimate jurisdiction of questions of law and fact arising in such case. Chicago M. & St. P. R. Co. v. Coogan, 271 U. S. 472, 70 L. Ed. 1041.

[fol. 188] 4. That your petitioners, being the parties aggrieved by the aforesaid judgment, desire to apply for a Writ of Certiorari from the Supreme Court of the United States, and in order to make such application and obtain such Writ it is necessary that the execution and enforcement of such judgment be stayed for a reasonable time.

5. That your petitioners stand ready to give such security for the protection of the plaintiff in the above stated cause as may be necessary or proper.

Wherefore your petitioners pray that the execution and enforcement of the aforesaid judgment be stayed pursuant to the Acts of Congress in such case made and provided, and that your petitioners be allotted a period of ninety days in which to apply for a Writ of Certiorari from the Supreme Court of the United States.

Frank G. Tompkins, Harley & Blatt, Attorneys for Southern Railway Company and Southern Railway-Carolina Division.

[fol. 189] IN SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

ORDER STAYING EXECUTION

The defendants, Southern Railway Company and Southern Railway-Carolina Division, having made application for stay of execution and enforcement of judgment in the above entitled cause for a reasonable time to enable them to apply for and obtain a Writ of Certiorari from the Supreme Court of the United States, it is

Ordered that the said defendants have ninety days from the date hereof within which to apply for a Writ of Certiorari from the Supreme Court of the United States and that the remittitur and execution and enforcement of judgment herein be stayed, provided the defendants shall file a bond with good and sufficient surety in the penal sum of five hundred dollars ($500.00) within ten days from the date hereof, conditioned to indemnify the plaintiff above named against all damages and costs that she may sustain by reason of the stay if the defendants fail to make application for such Writ within the period allotted therefor, or fail to obtain an order granting their application, or fail to make good their plea in the Supreme Court of the United States.

It is further ordered that a copy of this order be served without delay on the plaintiff herein or one of her attorneys of record.

It is further ordered that this order be filed in the office of the Clerk of the Supreme Court of South Carolina.

Jesse F. Carter, Associate Justice of the Supreme Court of South Carolina.

December 19, 1931.

[fol. 190] IN SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the above-entitled Court:

You are hereby requested to make a transcript of the record of this cause to be used in an application to the

Supreme Court of the United States for a Writ of Certiorari in said cause, the transcript to consist of:

1. The record on appeal in said cause;
2. The opinion of the Supreme Court of the State of South Carolina;
3. All journal entries contained in the records and proceedings of the Supreme Court of the State of South Carolina relating to said cause;
4. The final judgment and decision of the Supreme Court of the State of South Carolina;
5. Your certificate to the record that it is a complete record in said cause.

Dated this 29th day of December, 1931.

Frank G. Tompkins, Harley & Blatt, Attorneys for Appellants.

[fol. 191] Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 18, 1932

The petition herein for a writ of certiorari to the Supreme Court of the State of South Carolina is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 788

SOUTHERN RAILWAY COMPANY, AND SOUTHERN RAILWAY-CAROLINA DIVISION, *Petitioners,*

v.

MARY O. YOUNGBLOOD, AS ADMINISTRATRIX OF THE ESTATE OF CLEVELAND J. YOUNGBLOOD, Deceased, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA, AND BRIEF IN SUPPORT THEREOF.

SIDNEY S. ALDERMAN,
H. O'B. COOPER,
FRANK G. TOMPKINS,
J. E. HARLEY,
Attorneys for Petitioners.

S. R. PRINCE,
Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No.

SOUTHERN RAILWAY COMPANY, AND SOUTHERN RAILWAY-CAROLINA DIVISION, *Petitioners,*

v.

MARY O. YOUNGBLOOD, AS ADMINISTRATRIX OF THE ESTATE OF CLEVELAND J. YOUNGBLOOD, Deceased, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA.

To the Honorable the Supreme Court of the United States:

Your petitioners, Southern Railway Company and Southern Railway-Carolina Division, pray this Court to review on writ of certiorari a judgment of the Supreme Court of the State of South Carolina in the case of *Mary O. Youngblood, as Administratrix of the estate of Cleveland J. Youngblood, deceased, v. Southern Railway Company and Southern Railway-Carolina Division,* rendered on the 14th day of December, 1931, as shown by the opinion of that Court (R. 165). Under the practice prevailing in South

Carolina, no final judgment, separate from the opinion of the Supreme Court, is rendered, and the opinion is the final judgment. The record has been reprinted in this Court, and page references herein are to the record as printed for this Court.

I.

SUMMARY STATEMENT OF THE MATTERS INVOLVED.

Brief History of the Case.

This was an action by the plaintiff administratrix for damages for the alleged wrongful death of her intestate. It was brought, tried and decided under the Federal Employers' Liability Act, 35 Stat. 65-66, 45 U. S. C. 51-59. It was alleged in the complaint and admitted in the answer (R. 2, 4) and it appears from the evidence without dispute (R. 16, 23, 91, 147-149) that at the time of the fatal injury the intestate was employed and the railway companies were engaged in interstate commerce and transportation.

The judgment of the Supreme Court of South Carolina, sought to be reviewed, affirmed judgment for plaintiff administratrix, on a verdict for $12,500.00, as damages for the alleged wrongful death of her intestate, employed by petitioners as conductor on an extra train consisting of an engine and tender running light. He was killed while riding in the cab with the engineer and fireman, in a head-on collision with a superior train, resulting from his own disobedience of a written meet order which had been furnished him, which he had read and had in his possession, and which had been neither fulfilled, cancelled, nor annulled. The collision occurred about 9:30 or 9:35 a. m., in a heavy fog, after the intestate's train had passed the ordered meeting point, Orangeburg, S. C., at 9:25 a. m., and had run three miles beyond, colliding with the opposing superior train on the main line just beyond Stilton.

The collision resulted also in the death of the engineer on intestate's engine and in the deaths of three members of the unoffending superior train, the conductor, the engineer and the fireman (R. 7, 143).

There were three trials of this case in the state court (R. 166). The first trial resulted in a judgment for petitioners on a directed verdict, but on appeal the Supreme Court of South Carolina reversed that judgment and remanded for a new trial. See 137 S. C. 47, 134 S. E. 660. Two justices, Cothran and Purdy, dissented on the ground that verdict was properly directed against the plaintiff and in favor of defendants.

The second trial resulted in a verdict for plaintiff, respondent here, for $35,000.00 On appeal from judgment on that verdict, the State Supreme Court reversed the judgment for errors of law committed and remanded again for a new trial. Purdy, J., an acting justice, did not participate in this decision, but Cothran, J., concurred in the reversal of the judgment but dissented from the granting of the new trial, asserting that the case should have been remanded for judgment in favor of defendants. See 152 S. C. 265, 149 S. E. 742.

The case was tried for the third time in the trial court and resulted in verdict and judgment in favor of respondent, plaintiff, for $12,500.00. It is the opinion and judgment of the Supreme Court of South Carolina affirming this judgment which is sought to be reviewed by this petition. That opinion and judgment, not yet reported, rendered December 14, 1931, is in the record (R. 165). Cothran, J., did not sit, being ill.

Reference to Cognate Case Involving Engineer's Death.

L. K. Dantzler, the engineer on the train of which Youngblood was conductor, was also killed in the collision (R. 7). A suit cognate to this suit was brought in the same court by his administratrix, Mary Elizabeth Dantzler, against these petitioners, to recover damages for the engi-

neer's death. It was tried on substantially the same evidence as the present Youngblood case, though on a separate record. It also resulted in a verdict and judgment against petitioners in the same amount of $12,500.00. That judgment was affirmed by the Supreme Court of South Carolina on the same day on which the opinion was rendered in this case, a separate opinion being written in the Dantzler case, but in which that court merely said that the questions raised were the same as in the Youngblood case, that the evidence was substantially the same, and that "what we have said, therefore, in the Youngblood case, disposes of the question here raised." (See Dantzler Record, 188.)

We refer to the Dantzler case here because petitioners are co-incidentally filing the record and a petition for certiorari and supporting brief with this Court in the Dantzler case also. That petition raises the same questions as the present petition and we suggest that this Court will probably desire to consider together the petitions in the two cognate cases.

With this in view, it is important to point out *in limine* that there is no allegation, charge or contention of the plaintiff in the Youngblood (conductor's) case that any negligence on the part of Dantzler (the engineer) caused Youngblood's death. Similarly, there is no allegation, charge or contention of the plaintiff in the case of Dantzler, the engineer, that any negligence on the part of Youngblood, the conductor, caused Dantzler's death. In neither case did the plaintiff charge any negligence on the part of any member of the innocent crew of the opposing train.

In each of the cases the judgment was recovered, and was affirmed by the Supreme Court below, solely on the theory that, notwithstanding the admitted negligence of the plaintiff's intestate which proximately caused his death, there was sufficient evidence to go to the jury that negligence of dispatchers and operators of petitioners contributed "in part" to the death.

In the present (Youngblood) case, the alleged negligence of dispatchers and operators relied on to support recovery was:

1. The failure to give the intestate at the meeting point an additional copy of the same meet order he had received at the starting point and under which he was running.

2. The failure to give verbal instructions, unauthorized by the rules, to the intestate at the meeting point, reminding him to obey his written meet order.

3. The giving the intestate a "clear board" at the meeting point, which, under the rules and under all the testimony, merely said to him, "I have no further orders for you, proceed under the order you have," and allowed him to pass the board for the sole purpose of reaching and entering the passing track, there to wait the meeting, superior train.

4. The failure to deliver copies of the meet order to the superior train at some point prior to the meeting point, which, if it had been done, would in no wise have changed the situation. The superior train would have proceeded on toward the meeting point and to the point of collision just as it actually did, confident that intestate's train was waiting in the passing track at the ordered meeting point.

In the Dantzler case (engineer's case) only the first three of the above outlined grounds of negligence are charged, no evidence or contention appearing on that record corresponding to 4 *supra*. With this exception, the theory of respondents in the two cases is virtually identical.

The Evidence and the Grounds of Negligence Asserted.

The evidence is somewhat voluminous, but the facts are practically undisputed and are as follows:

The engine, with tender, upon which the intestate was riding when he was killed, was identified as *Extra Train 483 West* (bound). The superior freight train with which

it collided head-on was identified as *Extra Train 723 East* (bound).

Petitioners own and operate, among other lines of railroad, a single track road between Charleston and Columbia, in South Carolina, through Branchville, Orangeburg, St. Matthews, Fort Motte, and Andrews, the freight yard near Columbia. In railroad terminology, trains running from Columbia to Charleston are considered eastbound trains, and from Charleston to Columbia westbound. On the morning of the accident the engine of a westbound freight train known as Extra 683 West became disabled at Forte Motte, a station about 19 miles west of Orangeburg (R. 23). This freight train, Extra 683 West, contained 24 cars of interstate freight (R. 91, 147-149). Petitioners kept a switching or yard engine at Branchville, a junction point about 18 miles east of Orangeburg, and decided to send that engine, No. 483, west to relieve the disabled engine at Fort Motte and carry the freight train on to Andrews, the freight yard near Columbia, the crew of this relief engine consisting of respondent's intestate as conductor, L. K. Dantzler as engineer, and J. B. Witherspoon as fireman (R. 23).

At the same time a freight train known as Extra 723 East was moving over the same line of road in an easterly direction from Columbia to Charleston. As it was necessary for these two trains, Extra 483 West and Extra 723 East, to meet and pass each other at some point on the road, the train dispatcher at Charleston wrote out and sent the following telegraphic order to Branchville and Orangeburg:

> "Extra 723 East get this order and meet Extra 483 West at Orangeburg. Engine 483 run extra Branchville to Andrews." (R. 23-24)

This was known as a form "31" order, and its serial number was 18. A form "31" order has to be signed for

by the conductor when delivered to him (R. 11). This order No. 18 was sent simultaneously to the Branchville and Orangeburg operators at 7:58 a. m. (R. 10, 24). The order to the Branchville operator was transmitted and received addressed only to Engine 483 (R. 27, 48), which meant that it was a 3-copy order (R. 15, 20, 51), and hence the operator at Branchville made three copies of the order, one for his file, and delivered two copies to respondent's intestate, who signed for the same at 8:32 a. m. (R. 11, 97). Conductor Youngblood delivered one copy of the order to Engineer Dantzler, and they read over the order in the presence of Fireman Witherspoon before their engine left Branchville (R. 104). The evidence is uncontradicted that there was nothing on the face of the order delivered to respondent's intestate at Branchville to indicate that he would be given additional copies of this order, or any other order, at Orangeburg (R. 28, 97).

The dispatcher at Charleston testified (R. 48), and his train order book showed (R. 150), that this order No. 18 as transmitted to Orangeburg was addressed to Extra 723 East and operator,—the words "and operator" in the address signifying that it was a five copy order, and that the operator at Orangeburg should make five copies of the order, one for his file and two copies to be delivered to the conductor of each train affected. However, the operator on duty at Orangeburg, T. E. Jones, testified that this order No. 18 as transmitted to him did not contain the words "and operator" in the address, but was addressed only to Extra 723 East, and hence he made but three copies of the order,—one for his file and two copies to be delivered to the conductor of the train addressed (R. 76). Shortly after this order was sent, Operator Jones at Orangeburg was relieved by Operator Tyson, and Jones turned over to his successor, Tyson, the three copies that he had made of this order No. 18 addressed only to Extra 723 East (R. 77). Under this arrangement the operator

at Orangeburg had no copies of the order for delivery to the conductor of Extra 483 West, respondent's intestate, as he would have had if the order had been received at Orangeburg as a 5-copy order (R. 81).

While these two trains, Extra 483 West and Extra 723 East, were both extra trains, Extra 723, being eastbound, was the superior train by authority of the time-table direction (R. 27-28, 38, 41-42, 141) and hence Extra 483 West was required to take the siding at the meeting point, as provided by rule No. 88 as follows (R. 153):

> "At meeting points between extra trains, the train in the inferior time-table direction must take the siding unless otherwise provided."

Also, rule No. 513 of petitioners' rule book is as follows (R. 160):

> "Approaching meeting points made by train order, the train to take siding may, after stopping, pass the stop signal immediately preceding the meeting point and proceed under control to the entrance switch of siding."

At 8:35 a. m. engine 483, then operated as a train, Extra 483 West, consisting of only the engine and tender, with Conductor Youngblood, Engineer Dantzler and Fireman Witherspoon riding in the cab of the engine, left Branchville and proceeded west toward Orangeburg (R. 97, 104). At Rowesville, a station about 8 or 9 miles east of Orangeburg, Conductor Youngblood was handed an order to the effect that No. 12, engine 1055, which was the regular passenger train from Columbia to Branchville, would wait at packing house switch Orangeburg until 9:15 for Extra 483 West (R. 105). This packing house switch is located about three-fourths of a mile east of the station at Orangeburg (R. 109). Extra 483 West proceeded on to the packing house switch, where it took the siding and waited for

the passenger train, No. 12, to pass (R. 105, 109). Extra 483 West then backed out on to the main line and proceeded toward the station at Orangeburg and stopped at a point about 100 yards east of the semaphore, which was showing red or the stop signal against this train (R. 82-84). The engineer, Dantzler, then sounded four blasts of the whistle for train order signals (R. 36, 79, 109), whereupon the operator at Orangeburg dropped the semaphore bar, indicating proceed or clear signal and signifying that he had no train orders for the crew of that train (R. 83). The semaphore at Orangeburg is located in front of the operator's office and about 75 yards east of the east switch of the passing track (R. 54, 93-94, 142), and a westbound train approaching Orangeburg would necessarily have to proceed past this semaphore in order to reach the entrance to the passing track. This passing track is about three-fourths of a mile long (R. 26, 94).

The operator at Orangeburg reported by telephone to the dispatcher at Charleston the arrival of Extra 483 West, and was told by the dispatcher "to clear him and let him go to the west end of the pass track and wait on Extra 723" (R. 49, 78). The dispatcher testified that he was anxious to get Extra 483 to Fort Motte as quickly as possible (R. 49), and that by waiting in the west end of the passing track instead of the east end, this train would be in position to make a more expeditious departure from Orangeburg after Extra 723 East had arrived (R. 61). When asked on examination by counsel for respondent why he did not deliver to the conductor of Extra 483 the verbal message received from the dispatcher, the operator at Orangeburg testified (R. 80): "He didn't tell me to tell him." This operator also testified that when he dropped the semaphore bar he knew that the crew of Extra 483 West had in their possession a train order requiring them to meet Extra 723 East at Orangeburg, and that when this engine passed by the semaphore and sta-

tion, he assumed it was going up in the passing track to wait on Extra 723 (R. 83-84).

Extra 483 West proceeded past this semaphore and past the east switch of the passing track and on down the main line to the west end of the passing track, where it stopped after another engine in the yards (No. 61) sounded one blast of the whistle, which was a cautionary signal (R. 113). As to what ensued, the undisputed testimony of Fireman Witherspoon is as follows (R. 106-107):

> "After we passed the semaphore, and was going up by the pass track switch another engine gave a blast of the whistle, which indicates stop, and Dantzler stopped and examined the switch, and we pulled up over the switch, and Youngblood came up and got on the engine * * * I asked him if he did not intend to back in there, and he said No, we have time to go to Stilton, and I went to work on my fire, and the next time I realized where we were we were going over the switch at Stilton, and I turned to him to ask if he was going in there, and at that time he hollered to me to get ready to jump,—we are going to hit."

Extra 483 West collided head-on with Extra 723 East at a point just west of Stilton, a small station 2.7 miles west of Orangeburg (R. 29), this collision resulting in the deaths of respondent's intestate, Conductor Youngblood, and Engineer Dantzler of the crew of Extra 483, and also in the deaths of Conductor Ulrich, Engineer Brown and Fireman Hopkins of the crew of Extra 723 (R. 29, 142). Extra 483 arrived at Orangeburg, the meeting point, at 9:25 a. m. (R. 52), and the collision occurred about 9:30 or 9:35 (R. 22, 52).

It was admitted in the record that copies of the train order No. 18 delivered at Branchville to the conductor and engineer of Extra 483 were found upon their persons after the collision (R. 24-25, 150).

There was evidence that the meet order might have been

delivered to the superior train, Extra 723, at a prior station on its run, west of the meeting point, instead of addressing it to that train at the meeting point (R. 18-19, 30-32). But all the evidence shows without dispute that this, if it had been done, could have had no effect to prevent the collision; that even if it had been done the superior train would have proceeded on toward the meeting point and to the point of collision, confident in the belief that the intestate and Extra 483 were obeying the meet order by waiting in the passing track at the meeting point (R. 43-44, 58, 116).

The grounds of negligence alleged against petitioners (R. 2-3) and submitted to the jury were: in not providing a safe and suitable place wherein and whereon the intestate employee could perform his work; in not providing safe and suitable appliances and instrumentalities with which the intestate employee could safely perform his duties; in failing to furnish safe and competent agents, officers and employees to direct the movements of the two trains; in furnishing unsafe and incompetent agents, officers and employees to direct the movements of the two trains; in failing to give proper orders for the movement of the two trains which were in collision; in giving wrong and improper orders for the movement of the two trains which were in collision; in not giving proper signals for the movement of the train on which the intestate employee was working; in giving wrong and improper signals for the movement of the train on which the intestate employee was working; and owing to the negligence of the agents, officers and employees in directing the movements of the two trains in collision.

The decedent, Youngblood, was 39 years of age at the time of his death, and left surviving him his widow, the respondent, 40 years of age, and six children, namely: Grace, age 14 years; Claude, age 11 years; Cleveland, age 9 years; Carl, age 6 years; Sarah, age 4 years; and

James, age 10 months (R. 9). Petitioners paid the deceased $2,333.07 as wages for the year preceding his death (R. 143), and respondent testified that she and the six children were dependent upon her intestate for support and were supported by him (R. 9-10), but there was no testimony as to what portion of his earnings the deceased contributed to the support of his family. No evidence was offered as to the deceased's or his widow's expectancy of life, and no proof as to what pecuniary assistance the decedent's family might reasonably have expected to receive from the continuation of his life.

At the close of all the evidence, petitioners moved for the direction of a verdict in their favor, which motion was overruled and exception taken thereto (R. 145-146, 163). The State Supreme Court sustained the trial court's refusal to grant petitioners' motion for a directed verdict (R. 165-171). This holding of the Supreme Court of South Carolina, petitioners contend, was erroneous, and is assigned as error.

Judgment was rendered for respondent in the sum of $12,500.00 (R. 1), which judgment was affirmed by the Supreme Court of South Carolina on December 14, 1931, as shown by its opinion and judgment in the record (R. 165-171).

II.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The entire evidence herein is wholly insufficient to prove actionable negligence of the petitioners, or that such negligence was the proximate cause of intestate's death; the entire evidence shows that the sole, efficient, proximate cause of intestate's death was his own negligence in disobeying his meet order; and the judgment for respondent should have been reversed, and judgment for petitioners should have been entered, as matter of law under the Federal statute.

Atchison, T. & S. F. R. Co. v. Saxon, October Term, 1931, No. 291, decided Feb. 15, 1932, 284 U. S. . . .;
Atchison, T. & S. F. R. Co. v. Toops, 281 U. S. 351;
Unadilla Valley R. Co. v. Caldine, 278 U. S. 139;
Yadkin R. Co. v. Sigmon, 267 U. S. 577, reversing and remanding without opinion 186 N. C. 519, 120 S. E. 56;
Davis v. Kennedy, 266 U. S. 147;
Frese v. Chi., B. & Q. R. Co., 263 U. S. 1;
Great Northern R. Co. v. Wiles, 240 U. S. 444;
Bradley v. Northwestern P. R. Co., 44 F. (2d) 683;
Paster v. Pennsylvania R. Co., 43 F. (2d) 908;
Southern R. Co. v. Hylton, 37 F. (2d) 843;
Unadilla Valley R. Co. v. Dibble, 31 F. (2d) 239, certiorari denied, 280 U. S. 565;
Virginian R. Co. v. Linkous, 230 Fed. 88, certiorari denied, 242 U. S. 630;
Davis v. Payne, (Ore.) 216 Pac. 185, certiorari denied, 263 U. S. 720;
McDonald v. Great Northern R. Co., (Minn.) 207 N. W. 194.

2. The entire evidence herein shows that the intestate voluntarily exposed himself to risks and dangers so open and obvious that no ordinarily prudent man would have continued to face them, and he assumed the risk of his death.

Missouri Pac. R. Co. v. David, No. 365, October Term, 1931, decided Feb. 15, 1932;
Toledo, St. L. & W. R. Co. v. Allen, 276 U. S. 165;
Atlantic C. L. R. Co. v. Southwell, 275 U. S. 64;
St. L. S. F. R. Co. v. Mills, 271 U. S. 344;
Chesapeake & Ohio R. Co. v. Nixon, 271 U. S. 218;
Pryor v. Williams, 254 U. S. 43;
Chi., R. I. & P. Ry. Co. v. Ward, 252 U. S. 18;
Boldt v. Pennsylvania R. Co., 245 U. S. 441;
Chesapeake & O. R. Co. v. De Atley, 241 U. S. 310;
Seaboard A. L. Ry. v. Horton, 233 U. S. 492;
Chesapeake & O. R. Co. v. De Atley, 159 Ky. 687, 167 S. W. 933, 935.

3. The Supreme Court of South Carolina misinterpreted the Federal Employers' Liability Act in upholding a recovery of substantial damages on the evidence, there being an entire absence of any proof as to what pecuniary assistance or support the named beneficiaries might reasonably have expected to receive from respondent's intestate had he lived.

Gulf, C. & S. F. R. Co. v. McGinnis, 228 U. S. 173;
Michigan Central R. Co. v. Vreeland, 227 U. S. 59;
Nashville, C. & St. L. R. Co. v. Anderson, 134 Tenn. 666, 185 S. W. 677.

WHEREFORE, because said decision and judgment of the Supreme Court of South Carolina decided the foregoing Federal questions erroneously and contrary to the decisions of this Court, your petitioners, upon this petition, upon the annexed brief, and upon a certified transcript of the record of all proceedings in the Supreme Court of South Carolina, pray that a writ of *certiorari* be issued, to the end that said cause may be reviewed and determined by this Court, as provided by law, and that upon such review the said judgment of the Supreme Court of South Carolina be reversed.

SOUTHERN RAILWAY COMPANY, AND
SOUTHERN RAILWAY-CAROLINA DIVISION,

By SIDNEY S. ALDERMAN,
H. O'B. COOPER,
FRANK G. TOMPKINS,
J. E. HARLEY,
Attorneys for Petitioners.

S. R. PRINCE,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No.

SOUTHERN RAILWAY COMPANY, AND SOUTHERN RAILWAY-CAROLINA DIVISION, *Petitioners*,

v.

MARY O. YOUNGBLOOD, AS ADMINISTRATRIX OF THE ESTATE OF CLEVELAND J. YOUNGBLOOD, Deceased, *Respondent*.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I.

THE OPINION OF THE COURT BELOW.

The opinion of the Supreme Court of South Carolina has not yet been officially reported. It will be found in the record beginning at page 165.

II.

JURISDICTION.

The date of the judgment sought to be reviewed is December 14, 1931.

The jurisdiction of this Court is invoked on the ground that petitioners, in the courts below, claimed immunity from liability and asserted rights under the Federal Employers' Liability Act, 45 U. S. C. 51-59, a statute of the United States, which claim and rights were denied, and that petitioners have not heretofore had opportunity to submit said claim and rights for adjudication to any Federal tribunal, jurisdiction being therefore invoked under Judicial Code, Section 237, as amended, 28 U. S. C. 344 (b).

Some of the cases believed to sustain the jurisdiction of this Court are:

Atchison, T. & S. F. R. Co. v. Saxon, decided Feb. 15, 1932, 284 U. S. ..;
Atchison, T. & S. F. R. Co. v. Toops, 281 U. S. 351;
Chesapeake & Ohio R. Co. v. Stapleton, 279 U. S. 587;
Unadilla Valley R. Co. v. Caldine, 278 U. S. 139;
Toledo, St. L. & W. R. Co. v. Allen, 276 U. S. 165;
Chicago, M. & St. P. R. Co. v. Coogan, 271 U. S. 472;
Chesapeake & Ohio R. Co. v. Nixon, 271 U. S. 218;
Yadkin R. Co. v. Sigmon, 267 U. S. 577;
Davis v. Kennedy, 266 U. S. 147;
Frese v. Chi., B. & Q. R. Co., 263 U. S. 1.

III.

STATEMENT OF THE CASE.

The case is sufficiently stated in the accompanying petition, in which the relevant facts are fully stated. References to the facts will be made and repeated in the body of this brief only as may be necessary to discussion of the questions involved.

IV.

SPECIFICATION OF ERRORS.

The errors assigned and relied on by petitioners are the following:

1. That the Supreme Court of South Carolina erred in refusing to sustain and overruling petitioners' exceptions 1, (a), (c), and (d), as follows:

Praying reversal of the verdict and judgment—

> "1. Because his Honor erred * * * in overruling the motion for direction of verdict in favor of defendants, upon the grounds:
>
> (a) That the only reasonable inference from the entire testimony is that the death of the plaintiff's intestate was caused solely by his own negligence and recklessness.
>
> * * * * * * * * * *
>
> (c) That the only reasonable inference to be drawn from the entire testimony is that the proximate cause of the injuries resulting in the death of plaintiff's intestate was the intestate's own violation of a positive meet order which he had in his possession, not fulfilled, superseded or annulled.
>
> (d) That there is no evidence of actionable negligence on the part of the defendants." (R. 163)

2. That the Supreme Court of South Carolina erred in refusing to sustain and in overruling petitioners' exception 1, (b), as follows:

Praying reversal of the verdict and judgment—

> "1. Because his Honor erred * * * in overruling the motion for direction of verdict in favor of defendants, upon the grounds:
>
> * * * * * * * * * *
>
> (b) That the entire testimony is susceptible of but one reasonable inference, namely, that the danger of the situation resulting in the death of plaintiff's intestate was so obvious that an ordinarily careful person would have observed and appreciated the same, and hence plaintiff's intestate assumed the risks thereof." (R. 163)

3. That the Supreme Court of South Carolina erred in refusing to sustain and in overruling petitioners' exception 1, (e), as follows:

Praying reversal of the verdict and judgment—

"1. Because his Honor erred * * * in overruling the motion for direction of verdict in favor of defendants upon the grounds:

* * * * * * * * *

(e) That there is no evidence as to pecuniary loss sustained by the beneficiaries named in the complaint as the result of the death of plaintiff's intestate and hence no evidence upon which to base an award of damages." (R. 163)

V.

ARGUMENT.

POINT I.

THE ENTIRE EVIDENCE HEREIN IS WHOLLY INSUFFICIENT TO PROVE ACTIONABLE NEGLIGENCE OF THE PETITIONERS, OR THAT SUCH NEGLIGENCE WAS THE PROXIMATE CAUSE OF INTESTATE'S DEATH; THE SOLE, EFFICIENT, PROXIMATE CAUSE OF INTESTATE'S DEATH WAS HIS OWN NEGLIGENCE; AND THE JUDGMENT FOR RESPONDENT SHOULD HAVE BEEN REVERSED, AND JUDGMENT FOR PETITIONERS SHOULD HAVE BEEN ENTERED, AS MATTER OF LAW UNDER THE FEDERAL STATUTE.

What was said by this Court in *Atchison, T. & S. F. R. Co. v. Saxon*, No. 291, October Term, 1931, decided Feb. 15, 1932, applies here:

"The cause is one of a peculiar class where we have frequently been obliged to give special consideration

to the facts in order to protect interstate carriers against unwarranted judgments and enforce observance of the Liability Act as here interpreted."

The Supreme Court of South Carolina in this case has imposed on petitioners a liability, under the Federal Employers' Liability Act, in plain disregard of controlling Federal law as laid down and enforced in numerous recent decisions of this Court, for the death of a conductor killed in a collision caused by his own reckless disobedience of a positive meet order which he had and was bound to obey. His disobedience of the order also caused the deaths of three innocent members of the crew of the unoffending superior train collided with, thereby imposing clear liability on petitioners under the Act for those innocent deaths. Petitioners have paid the claims for those deaths (R. 143). Yet the Act has been perverted to allow the administratrix of the employee, whose own disobedience of order and positive recklessness caused the disaster, to recover damages for his death.

Unless this Court grant this petition and give relief these interstate carriers have no protection against the unwarranted judgment and the Liability Act as interpreted by this Court has not been observed.

There is not here alleged in the complaint or relied upon to support the recovery any charge of negligence on the part of any other member of the crew of the intestate's train or on the part of any member of the crew of the opposing train. The sole support of the recovery is the alleged negligence of the dispatcher and/or of the operator at the ordered meeting point in the transmission and delivery of the order which the intestate admittedly received and disobeyed, and in failing to do certain additional things to remind him again of his order and thus seek to prevent his disobedience, and in signaling his train.

Succinctly stated, the question is this: when a conductor, riding with the engineer and fireman on the cab of and

in command of an engine running light with tender as an extra train and operated solely under authority of a written train order, delivered to him in duplicate at the start of his run, signed for by him and read over by him in the presence of the engineer and fireman, which written order was a meet order requiring him to meet an opposing superior train at a meeting point on his run, disobeys and disregards his meet order, proceeds up the main line in the territory of the other train almost three miles beyond the ordered meeting point and there collides with the unoffending opposing train in a dense fog and is killed in the collision resulting from his disobedience of the meet order, can it be held that the employer railroad is liable for his death under the Federal Act on the theory that a proximate cause "in part" of his death was the failure of the dispatcher and/or operator to deliver to him at the meeting point extra copies of the same meet order he already had, or to give him unauthorized verbal instructions to the same effect as that order, or their failure to furnish the order to the other train prior to the meeting point, in which event it still would have proceeded on to the point of collision confident that intestate's train was at the meeting point, or the act of the operator in giving the intestate a clear board at the meeting point thereby telling him, under the rules, "proceed past this board into the passing track under the order you have; I have no further orders for you"?

As this Court has frequently pointed out, one who claims under the Federal Act must in some adequate way establish, not only negligence, but also a proximate causal relation between the negligence and the injury or death.

Atchison, T. & S. F. R. Co. v. Saxon, 284 U. S. .., decided Feb. 15, 1932;
Atchison, T. & S. F. R. Co. v. Toops, 281 U. S. 354;
New York Central R. Co. v. Ambrose, 280 U. S. 486;
Chi., M. & S. P. R. Co. v. Coogan, 271 U. S. 472.

And the kind or amount of evidence required to prove negligence and to prove proximate cause is not subject to the control of the several states. This Court will examine the record, and if it is found that as a matter of law the evidence is not sufficient to sustain a finding that the carrier's negligence was a cause of the death, judgment against the carrier will be reversed.

Cases cited, *supra.*

On the record here, it could not be disputed that the negligence of respondent's intestate, in violating a positive meet order and proceeding beyond the meeting point to a collision with a superior train or of whose approach he had full knowledge, was *a* direct, efficient, proximate cause of his death. The issue is whether on the record there is any evidence from which a reasonable inference could be drawn that any negligence of the employer carriers was also a proximate cause of the death "in part," so as to bring into play the comparative negligence rule of the Act. If not, and we assert this negative, then the negligence of the respondent's intestate was as matter of law the sole, efficient, proximate cause of his death and respondent cannot recover.

Theories Upon Which the Court Below Sustained Recovery.

On the first trial, the trial court directed verdict for petitioners saying:

> "I don't think the evidence distinguishes the case in any material way from the *Davis vs. Kennedy** case. I think that the evidence does not tend to show negligence in directing the operation of the trains, and that the letting down of the semaphore board brought about a condition under which the collision occurred; but the collision never would have occurred had not

*266 U. S. 147.

> the plaintiff violated orders which had been given him at Branchville,—and which had not at any time been superseded, directing him to wait at Orangeburg for 723. The collision was due entirely to the fault of the conductor Youngblood, in failing to carry out the orders that were given him at Branchville, and therefore under the authority of the *Davis vs. Kennedy* case * * *, I have to direct a verdict for the defendant. (See 137 S. C. 47, 134 S. E. 660.)

The opinion of the majority of the State Supreme Court on the first appeal, reversing judgment on the verdict directed for the defendants, 137 S. C. 47, 134 S. E. 660, held that there was evidence of employer negligence proximately causing the death, sufficient for submission to the jury, on the following theories:

1. That it was negligence for the operator at Orangeburg to drop the semaphore board.

2. That there was negligence, either on the part of the Charleston dispatcher or of the Orangeburg operator, in failing to treat the meet order addressed to Extra 723 as a 5-copy order and deliver extra copies thereof to intestate on Extra 483 at the meeting point.

3. That it was negligence for the operator at Orangeburg, after dropping the semaphore board, to fail to give additional verbal instructions to the intestate to the same effect as the written order he already had.

4. That it was negligence to fail to address and deliver the meet order to the opposing superior train, Extra 723, at some point prior to the meeting point.

The majority opinion said:

> "There is conflict in the testimony as to whether the dropping of the semaphore, the indication of which, according to the defendants' Rule Book is 'Proceed', indicated to Youngblood that his previous orders had been fulfilled and that he might proceed to his destination or merely that the Orangeburg operator had no further orders for him and that he should

carry out the order he already held by meeting Extra 723 at Orangeburg.

"The movement of the trains was entirely in the hands of the dispatcher and the operator, who were responsible for the proper movement and signaling thereof. Over these agents of the defendants the conductor had no control but in fact received his orders from them.

"As this case must be sent back for a new trial we shall not comment at length or in detail on the testimony. There was testimony tending to show negligence on the part of the defendants in the matter of signaling and directing the movement of the trains in question. The meet order being sent to the superior train at the meeting point, a situation arose which, under the defendant's rule, required special precautions to insure safety. A question of negligence on the part of the defendants arises in connection with the sending of the meet order by the dispatcher at Charleston or its disregard by the operator at Orangeburg. The operator at Orangeburg also failed to stop the train and give the crew the verbal instructions which the dispatcher at Charleston testified that he had directed him to give. Hence, we are of the opinion that, in spite of any contributory negligence on the part of the deceased, Youngblood, the whole matter should have been submitted to the jury for determination."

The above is the only light to be found in either of the three opinions of the majority below as to their theory of possible employer liability.

On the second appeal, 152 S. C. 265, 149 S. E. 742, the majority disposed very briefly of the exceptions addressed to the refusal of the second trial court to direct a verdict, merely saying that the evidence was practically the same, though slightly stronger for the plaintiff, and referring to the opinion on the first appeal.

On the third appeal, the opinion of the court (R. 165-171) again dealt summarily with the questions here raised, merely by reference to and quotation from the opinion of

the majority on the first appeal, with no additional discussion of the evidence and no discussion of intervening decisions of this Court. The decision on the first appeal seems to have been treated as establishing "the law of the case," as to whether there was sufficient evidence to support a recovery. Of course, the Federal law as interpreted by this Court applies and controls and the state court cannot create a different "law of the case."

The dissenting opinions of Judges Cothran and Purdy on the first appeal, 137 S. C. 47, 134 S. E. 660, constitute a complete brief on the case. They conclusively demonstrate that there was no evidence of any carrier negligence causally related to the death, on any or all of the theories of the majority. They correctly construe and apply the decisions of this Court and of other Federal courts as we understand them.

Purdy, J., did not sit on the second appeal but Cothran, J., dissented, 152 S. C. 280, on the ground that the evidence entitled the defendants to a directed verdict. He discussed later decisions of this Court, especially emphasizing *Unadilla Valley R. Co. v. Caldine,* 278 U. S. 139, and said:

> "In my opinion remanding the case for a new trial is but rolling empty barrels about, a profitless, wasteful enterprise. It does not appear to be appreciated that in cases involving the Federal Employers' Liability Act, not only, as admitted, are the Federal statutes and decisions upon every phase of the matter controlling, but the Supreme Court of the United States has promulgated, and time after time acted upon the principle, that they *will review the record of the case,* and if they find that there is no substantial basis in law for the liability of the employer, a judgment against him will be reversed; contrary to the principle announced by this Court, in cases under the laws of this state, that when there is any evidence tending to show liability, the judgment must stand, unless no other reasonable inference can be drawn from the evidence than that there is no liability."

In view of the above, we are forced to discuss each of the theories of carrier negligence which the State Supreme Court majority asserted on the first appeal to be sufficient to go to the jury.

The Meaning of Dropping the Semaphore.

There is no dispute on the record as to Youngblood's own negligence. He received the meet order, train order No. 18, at Branchville, and stated to Superintendent King the substance of the order, that he was to meet Extra 723 at Orangeburg (R. 139). He and his engineer, Dantzler, read over the order together, and shortly after the train pulled out from Branchville, in answer to a question from fireman Witherspoon as to what orders they had, Youngblood replied, "We have nothing but run extra to Andrews and meet 723 at Orangeburg" (R. 104). The evidence is uncontradicted that there was nothing on the face of the train order in his possession to indicate that he would be given additional copies of this order, or any other order, at Orangeburg (R. 28, 97).

When the intestate's train, Extra 483, proceeding west, reached Orangeburg, the meeting point, it stopped just east of the semaphore and sounded four blasts of the whistle. In response thereto, the operator at Orangeburg dropped the semaphore board to clear signal. Every witness in the case, without a single exception, who was questioned as to this change of the semaphore to clear signal, testified that it meant there were no train orders at that station for the crew of that train and for them to proceed on the orders they had (R. 36, 42-43, 55, 83, 119-120, 141). G. K. Fickling, who was not connected with the petitioner railroads, called as a witness for the respondent, testified on direct examination (R. 86):

> "Q. When the four blasts of the whistle were given, and the board drops, and drops from red to white,—what is the indication?

"A. To proceed.

"Q. What is the name of that when it is dropped?

"A. They call it a clear board.

"Q. That means what?

"A. *Proceed on the orders that you have.*

* * * * * * * * *

"Q. But when the board is dropped, the indication is what?

"A. *That they have no order for them.*"

And the witness Fickling testified on cross-examination (R. 88-89):

"Q. The only way that Extra 483 could have been operated was by train order?

"A. Yes, sir.

* * * * * * * * *

"Q. A verbal order would have no effect?

"A. No, sir.

"Q. It makes no difference who would give them, a verbal order itself is not binding?

"A. No, sir, if they had a written train order their duty was to comply with it.

* * * * * * * * *

"Q. If Captain Youngblood had in his possession a written train order, directing that he should meet a superior train at Orangeburg, wasn't it his duty upon reaching Orangeburg to go into a siding and wait on Extra 723?

"A. If he could find one to get in, yes, sir.

"Q. And there was one there a mile long?

"A. Yes, sir.

"Q. When the semaphore board is dropped, that is an indication that the station had no further train order?

"A. Yes, sir.

"Q. And that the conductor and the engineer should comply with the order that they had?

"A. Yes, sir."

H. C. Huggins, called as a witness for the respondent, testified that he had not been employed by a railroad since

1909, but had had experience as an engineer in main line service, and that he was familiar with the new rules of the Southern Railway Company and had copies of them in his office at Orangeburg. His manner or demeanor on the witness stand is apparent from a mere reading of his testimony, and it is manifest that he was overzealous to shield the intestate conductor from any blame and to fix negligence on the petitioners. He undertook to testify on direct argumentatively that dropping the semaphore board gave Youngblood authority to go to his destination, regardless of the meet order (R. 68, 75). He continued to make the same argument on cross-examination (R. 71) until challenged with the rules providing that a written train order remains in effect until fulfilled or superseded or annulled by another written order (R. 71). Then he swore that dropping the semaphore meant, "I have no further orders for you; proceed on the order you have," just as all the other witnesses testified (R. 71-72). He there said:

"Q. Now, when you drop that semaphore board,—what is that the sign of?
A. That he has no orders for you.
"Q. Then to do what?
A. To proceed.
"Q. On what?
A. On the running order that he had.

* * * * * * * * *

"Q. When the board drops it is an indication that he is to proceed on the orders that he has?
A. Yes, sir.
"Q. No doubt about that?
A. No, sir.

The situation is fully and clearly covered by petitioners' Rule 513 (R. 160), which shows exactly what the rights and duties of the intestate were. It provides:

"513. Approaching meeting points made by train order, the train to take siding may, after stopping,

pass the stop signal immediately preceding the meeting point and procede under control to the entrance switch of siding."

Rule 88 provided (R. 153):

"At meeting points between extra trains, the train in the inferior time-table direction must take the siding unless otherwise provided."

And Rule 97 provided (R. 154):

"97. Extra trains must not be run without train orders."

Intestate's train was in the inferior time-table direction. It was ordered and required to take the siding. It had no right to run without train order or in violation of its meet order. And, after stopping and receiving clear board, it had only the right to pass the signal immediately preceding the meeting point and to proceed under control to the entrance switch of the siding, entering the siding there in obedience of the meet order.

There is no substance of conflict on the record that this was true. The dropping of the semaphore told Youngblood there were no further orders for him at the meeting point, that he should proceed under the order he had, and merely cleared him to pass the semaphore for the sole purpose of getting into the passing track to obey that order, the passing track being the only place at which he could obey the meet order.

Conductor Youngblood was an experienced railroad man, having been employed by petitioner for many years (R. 9, 143), and he knew that dropping the semaphore board meant only that the operator at Orangeburg had no train orders for him, and he knew that he had to pass that semaphore and proceed 75 yards west of it in order to reach the entrance to the passing track at Orangeburg. He knew, as testified to by all the witnesses, that extra

trains are run only by train orders (R. 17-19, 28, 59. 82, 97, 119, 121, 130 and Rule 97, R. 154), and that "train orders once in effect continue so until fulfilled, superseded or annulled" (Rule 220, R. 156). He knew that a train order could not be superseded or annulled except by a subsequent train order in writing (R. 61, 121, 131), and when he got the semaphore signal that the Orangeburg operator had no train orders for him, he therefore knew that the written meet order in his pocket had not been superseded or annulled. He knew better than anybody else that he had not met and passed Extra 723, and hence his meet order could not have been fulfilled. He knew that his train, being westbound, was in the inferior time-table direction (R. 27-28, 38, 42, 141), and hence his train was required to take the siding at the meeting point (rule 88, R. 153). Also, he knew that, for the purpose of carrying out his meet order with the opposing superior train, he had a right, under rule 513 (R. 160), to disregard even the red board or stop signal of this semaphore and proceed past it under control to the entrance switch of the passing track. And when Conductor Youngblood, after passing the semaphore, failed to have his engine go in the passing track and await the arrival of Extra 723, but proceeded on the main line through the station yard and beyond Orangeburg, the meeting point, he violated the only order he had, and the only order that had been issued, governing the operation of his train.

There is no support in the evidence for the theory of the state court majority that it was competent for the jury to find that dropping the semaphore meant to Youngblood that his written order was cancelled or fulfilled, or that he was at liberty to disregard it and proceed to destination. All the evidence shows it meant to proceed under the written meet order he had.

The Treating of the Order Addressed to Extra 723 as a 3-Copy, Instead of a 5-Copy Order.

But the principal contention of respondent to support recovery, and to which the state court seems to have given most weight, is that if the meet order as addressed to Extra 723 at the meeting point had been treated as a 5-copy order, copies thereof being delivered to Youngblood at Orangeburg, this might have prevented his violation of the same order which was delivered to him at Branchville, and that the failure to do so was a negligent proximate cause of his death.

Observe that if this had been done Youngblood would only have received at the meeting point additional copies of the very order already in his possession and under which he knew he was running.

Thus the recovery rests here principally upon the theory that the failure of petitioners to give again to the intestate copies of the meet order which he already had, and their failure thereby to attempt to prevent him from violating an order which he was already bound to obey, was a negligent proximate cause of his disobedience of the order and of his resulting death.

What this Court said of such a theory in *Unadilla Valley R. Co. v. Caldine,* 278 U. S. 139, is here directly applicable:

> "Still considering the case as between the petitioner and Caldine, it seems to us even less possible to say that the collision resulted in part from the failure to inform Caldine of the telephone from train No. 15. A failure to stop a man from doing what he knows he ought not to do hardly can be called a cause of his act. Caldine had a plain duty, and he knew it. The message would only have given him another motive for obeying the rule that he was bound to obey."

So here, the doing of that the failure to do which is the negligence charged to support this recovery, *i. e.,* the giving to Youngblood of additional copies at the meeting

point of the meet order which he already had, would have furnished him no additional information or instruction, would only have given him an additional motive for obeying the meet order that he was already bound to obey. The failure of petitioners to stop him from doing what he knew he ought not to do cannot be called a proximate cause of his act of disobedience, or of his resulting death. It seems a clear perversion of the Act to say that when the employer has given the employee a proper and positive order, upon obedience to which his life and the lives of others depend, that the employer can be visited with responsibility, as for negligence, for his death resulting directly from his disobedience of the order, simply because the employer did not give him the same order again. That is to extend the employer's liability to that of an insurer or guarantor.

On this point the dissenting Justice, Cothran, well said, 137 S. C. 47, 134 S. E. 660:

> "It is impossible that the failure of 483 to receive the duplicate copies of the order, if the order had been properly transmitted as a 31-5-copy order and not as a 31-3-copy order, at Orangeburg, could have induced them to think that the order had been superseded or annulled. If these copies had been delivered to them they would not have had any more information than they already possessed from the orders which both conductor and engineer had received in Branchville and had in their pockets."

Failure of the Orangeburg Operator to Give Additional Verbal Instructions to the Same Effect as the Standing Written Order.

When intestate's engine, Extra 483, arrived at Orangeburg the operator there reported its arrival by telephone to the dispatcher at Charleston, and was told by the latter "clear him and let him go to the west end of the pass track and wait on Extra 723". (R. 49).

It is argued that the failure of the Orangeburg operator to give verbal instructions to Youngblood to go to the west end of the pass track and wait on Extra 723 could properly be found by the jury as negligence and as a proximate cause of the death.

The operator testified that he gave no such verbal instructions to Youngblood because he was not told to do so by the Charleston operator (R. 80).

In so far as such verbal instructions, had they been given, would have told Youngblood to wait in the pass track for Extra 723, they would merely have been a verbal repetition of the written order Youngblood already had. And, as to that, what we have said above with reference to failure to give additional copies of the order applies fully. Such verbal message would only have given the deceased an additional motive for obeying the written order he was already bound to obey. The failure to give such added motive cannot be a cause of his disobedience.

Besides, it would have been bad practice to attempt to give verbal instructions as to a matter already covered by a positive written order. The written order could only be superseded or annulled by another order in writing and it continued in effect until fulfilled, or superseded or annulled in writing (R. 61, 121, 131).

And finally, for the operator to have given the verbal instruction "go to the west end of the pass track and wait on Extra 723" would have been a highly dangerous proceeding as implying a verbal extension or modification of the standing written order. Under the written meet order, Extra 723 eastbound, as the superior train, had the right of way over the main line all the way to the east end of the pass track. In obeying the written order Youngblood's engine would have gone into the east end of the pass track to await 723. But if the operator had given the verbal instruction, it might have been construed as an attempt to modify the written order to the extent of giving

Youngblood the right of way to the west end of the pass track.

Had this been done, and had the collision occurred on the main line between the east and west ends of the pass track, a powerful contention of negligence could have been based on the partial abrogation of the written order by unauthorized verbal instructions. Certainly the failure to give such instructions was not negligence.

And certainly the failure to give them was not a proximate cause of the collision and deaths, which occurred after Youngblood had passed the west end of the pass track and proceeded nearly three miles further.

Judge Cothran made in his dissent an unanswerable comment on this theory of employer negligence, 137 S. C. 47, 134 S. E. 660, saying, with reference to the omitted verbal instructions:

> "Clearly this was an order, if it could be so considered, which the Train Dispatcher ran great risk in giving. Train 723 had the superior right of way from the west switch to the east switch of the passing track and that message required Youngblood to overlap the territory of 723 to that extent. If the collision had occurred between the two switches, much would have been made and, properly, of the indiscretion in such an order. Tyson would have been entirely justified in refusing to deliver it. Tyson cleared him to do what 483 was authorized under the rule to do; pass the semaphore and head into the east switch. How the failure to extend an order which should not have been given, could have caused Youngblood to disobey the meet order, refuse to enter the east switch which rules required him to do, refuse to enter the west switch which he was advised to do, and rush on upon an opposing train, is beyond my comprehension."

The Failure to Address the Meet Order to Extra 723 at Some Point West of the Meeting Point.

The only other suggested basis to support the finding of railroad negligence and proximate causation upon which

the judgment rests is that the opposing superior train did not get the meet order at some point west of the meeting point.

This is suggested in examination of witnesses by respondent's counsel (R. 30-31, 34, 45, 65-66) as being a violation of rule 208 (R. 155):

> "A train order must not be sent to a superior train at the meeting point if it can be avoided. When an order is so sent, the fact will be stated in the order and special precaution must be taken to insure safety."

The contention is that the meet order should have been given to Extra 723 at St. Matthews, 12 miles west of Orangeburg.

The State Supreme Court quoted this rule (R. 168) and in the opinion said (R. 170) that there was testimony tending to show negligent violation of it.

But there is no evidence on the record tending to show that the failure to deliver the meet order to the superior train prior to the meeting point had any causal relation to the collision. If that train had received the order at St. Matthews it would have had right of way to the meeting point just the same, and would have proceeded to the point of collision just as it did, believing Youngblood had obeyed the order and was waiting in the pass track at Orangeburg.

Only if Extra 723 had run past the meeting point and the collision had occurred east thereof could the failure to give it the meet order west of the meeting point have had a proximately causal relation to the collision. But it was struck by Youngblood's engine three miles west of the meeting point, while it was proceeding just as it would have been had it already received the meet order.

We again quote from the dissent of Cothran, J., 137 S. C. 47, 60, 134 S. E. 660:

"If there was the slightest evidence in the case that the failure, if there was such, to observe this rule, had any part in producing the disaster, the point would be worth considering. It could not possibly make any difference that 723 had not received notice of the order before they reached the meeting point, unless the failure to notify them in advance caused them to run by the meeting point and collide with the train they were expecting to meet, at some point *east* of the meeting point. As a fact, the collision occurred *west* of that point, at a place where 723 had the right to be, even if the order had been received before they left Columbia. Besides, the order which Youngblood received at Branchville and which he had in his pocket when extricated from the wreck, notified him that 723 was on the main line; that he must meet it at Orangeburg; and that he must take the side track there, being an inferior train, and allow it to pass, in accordance with Rule 88."

If Rule 208, under the circumstances stated, required "special precautions," certainly this injunction applied as well to the conductor of Extra 483, who was informed of the exact situation and who, nevertheless, passed and departed from the meeting point without exercising the slightest care, and, according to the uncontradicted testimony of the fireman (R. 106), consciously disregarded his meet order, asserting that he had time to go 2.7 miles further west to Stilton.

Evidently the thick fog (R. 6, 81, 107) prevented him and the other members of the crew from recognizing that they had reached Stilton, a small place with "just a few little warehouses and a little passenger shed" (R. 94-95), since they did not even go into the siding at Stilton, and the collision occurred just west of that point.

The Intestate's Negligent Violation of the Meet Order was the Sole Proximate Cause of his Death. The Recovery Cannot be Sustained Under Federal Decisions.

Even if it be assumed that there was any negligence of petitioners on any one or more of the theories of negligence upon which this recovery is sought to be supported, there is nothing to support a reasonable conclusion of efficient causal relation thereof to the collision and death. The only efficient, proximate cause, the only *causa causans*, was Youngblood's violation of a positive meet order.

This Court said in *Atchison, T. & S. F. R. Co. v. Toops*, 281 U. S. 351, where there was evidence of negligence but none of proximate causation:

> "But proof of negligence alone does not entitle the plaintiff to recover under the Federal Employers' Liability Act. The negligence complained of must be the cause of the injury. The jury may not be permitted to speculate as to its cause, and the case must be withdrawn from its consideration unless there is evidence from which the inference may reasonably be drawn that the injury suffered was caused by the negligent act of the employer." (citing cases)

We submit that to sustain the verdict here on the theory that if extra copies of the meet order had been given the deceased at Orangeburg, or if the command of the meet order had been verbally repeated to him there, or if the other train had received the meet order west of Orangeburg, the collision might not have happened, would, as this Court said in the *Toops case, supra*, "remove trial by jury from the realm of probability, based on evidence, to that of surmise and conjecture."

The only thing that caused the collision and death here was the violation of the meet order. The whole theory of the respondent, and of the State Court, is that petitioners should be held liable, not because they did anything to

cause the collision, but because they failed to do certain things which it is conjectured might have intervened to stop or affect the natural sequence of causation flowing from the intestate's violation of a positive order. Petitioners have been subjected to liability thus far because they did not prevent the intestate from doing what he had been ordered not to do and knew he should not do.

But such a theory does not square itself with accepted definitions of proximate causation:

> "The proximate cause of an injury is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred." 22 R. C. L. 110, sec. 2.
>
> "The active efficient cause that sets in motion a train of events which brings about a result without the intervention of any force started and working actively from a new and independent source."
>
> "That which originates and sets in motion the dominating agency that necessarily proceeds through other causes as mere instruments or vehicles in a natural line of causation to the result." 22 R. C. L. 111, 112, sec. 2.
>
> "The dominant cause from which the injury follows as a direct and immediate consequence." *Brady v. Oregon Lumber Co.* (Ore.), 243 Pac. 96, 45 A. L. R. 822.

Everything charged against petitioners as negligence was a failure to do something *prior* to the time when Youngblood actively violated his meet order. Nothing so charged intervened after his negligence or was an active, efficient cause. On the contrary, the natural, continuous sequence flowing from his act in passing the meeting point, unbroken by any intervening act of petitioners, led necessarily to collision and death.

We think the decision of this Court in *Unadilla Valley R. Co. v. Caldine,* 278 U. S. 139, above quoted from, is controlling here. There the facts were substantially as follows:

The defendant railroad company, engaged in interstate transportation, operated trains on a single track from Richfield Junction, through Bridgewater and River Forks, to New Berlin, in the State of New York. Printed orders were issued to all employees: "Train No. 2 will pass train No. 15 at Bridgewater Yard," and "Train No. 15 will take turntable siding at Bridgewater to allow train No. 2 to pass." Unless countermanded in writing by the superintendent, these orders were permanent. They were not countermanded. Train No. 2 was a gasoline passenger car of which plaintiff's intestate, Caldine, was conductor, and Dibble was motorman. Train No. 15 was a freight train of which Risley was conductor. They collided head-on a short distance south of Bridgewater Yard, and Caldine was killed. There had grown up a custom by which Risley, the conductor of the freight train, if he was a little late, would telephone that fact from his last station before Bridgewater, and Dawson, the defendant's station agent at Bridgewater, would take this message and orally deliver it to Caldine, thus giving to him a further warning that he must obey the rule. On this occasion the telephone message was sent, but Dawson omitted to inform Caldine. Dawson asserted that he did tell Dibble, the motorman, but Dibble denied this. At any rate, through somebody's negligence, the customary special notice and warning did not reach Caldine. Nevertheless, the conductor, in violation of printed orders, signaled the gasoline car to proceed, and the motorman, also in violation of them, obeyed the signal and started the car in plain sight of the station agent. The Court of Appeals of New York (246 N. Y. 365, 159 N. E. 172), in affirming the judgment in favor of the plaintiff in the trial court, said:

"The conductor's negligence cannot be viewed as the sole proximate cause of the collision. The station agent could and should have prevented it; so could the motorman. All three were negligent. If Caldine had not signaled in violation of orders, the collision would not have occurred. Neither would it have happened if Dawson had communicated Risley's message to Caldine * * * Dawson knew that the freight was approaching; Dibble ought to have known it and should have kept his car stationary. Negligence was not solely Caldine's. His death resulted in part from the negligence of Dawson and Dibble."

This Court, in reversing the judgment of the New York Court of Appeals, said, pages 141-142:

"The phrase of the statute, 'resulting in whole or in part,' admits of some latitude of interpretation and is likely to be given somewhat different meanings by different readers. Certainly the relation between the parties is to be taken into account. It seems to us that Caldine, or one who stands in his shoes, is not entitled as against the railroad company that employed him to say that the collision was due to anyone but himself. He was in command. He expected to be obeyed, and he was obeyed as mechanically as if his pulling the bell had itself started the train. In our opinion he cannot be heard to say that his subordinate ought not to have done what he ordered. He cannot hold the company liable for a disaster that followed disobedience of a rule intended to prevent it, when the disobedience was brought about by his own acts. See *Davis v. Kennedy*, 266 U. S. 147, 69 L. ed. 212 45 Sup. Ct. Rep. 33.

"Still considering the case as between the petitioner and Caldine, it seems to us *even less possible to say that the collision resulted in part from the failure to inform Caldine of the telephone from train No. 15. A failure to stop a man from doing what he knows that he ought not to do hardly can be called a cause of his act. Caldine had a plain duty, and he knew it. The message would only have given him another motive for obeying the rule that he was bound to obey.*" (Italics added)

In comparing the facts of the *Caldine Case* with those of the present case, we submit there is no substantial distinction. An additional copy of the meet order delivered to Youngblood at Orangeburg, or an additional verbal instruction to the same effect, would only have given him another motive for obeying his train order, which he was already bound to obey at his peril.

The case of *Unadilla Valley Ry. Co. v. Dibble,* 31 F. (2d) 239, certiorari denied thereto, 280 U. S. 565, related to the same accident as that in the *Caldine Case, supra.* Dibble, the engineer, brought suit for damages on account of injuries received in the same collision in which Caldine, the conductor, was killed. The Circuit Court of Appeals of the Second Circuit held that the engineer was not entitled to recover damages, and after quoting from the decision in the *Caldine Case,* the opinion continues, page 240:

> "Now, between Dibble and the railway, Dibble is in the same position as Caldine. There was a rule made for the protection of each, and each violated it; Caldine by his order, Dibble by his act. While it did not lie in Caldine's mouth, when he deliberately disobeyed the rule, to say that the accident was due to Dibble, it equally did not lie in Dibble's mouth, under identical circumstances, to say that the accident was primarily due to the neglect of Caldine. As against the railway, each was primarily responsible for the injury which befell him."

The case of *Great Northern Railway Co. v. Wiles,* 240 U. S. 444, 448, was an action for damages for the death of a brakeman, suit bring brought under the Federal Employers' Liability Act. Wiles was a rear brakeman on a freight train, which came to a stop after passing a curve by reason of the breaking in two of a drawbar in one of the cars of the train. The freight train was followed shortly by a passenger train. The night was dark and the place of collision was obstructed by a sharp curve and a bluff, so that the rear end of the freight train could not

be seen for more than five car lengths away. It was the duty of Wiles, under the rules of the railroad company, to go back and flag the following train. This he failed to do, but remained in the caboose, and was killed in the ensuing rear-end collision. In reversing the judgment for the plaintiff, this Court said:

> "There is no justification for a comparison of negligences or the apportioning of their effect. The pulling out of the drawbar produced a condition which demanded an instant performance of duty by Wiles,—a duty not only to himself, but to others. The rules of the company were devised for such condition and provided for its emergency. Wiles knew them, and he was prompted to the performance of the duty they enjoined (the circumstances would seem to have needed no prompting) by signals from the engineer when the train stopped. He disregarded both. His fate gives pause to blame, but we cannot help pointing out that the tragedy of the collision might have been appalling. He brought death to himself and to the conductor of his train. His neglect might have extended the catastrophe to the destruction of passengers in the colliding train. How impressive his duty was is manifest. To excuse its neglect in any way would cast immeasurable liability upon the railroads, and, what is of greater concern, remove security from the lives of those who travel upon them; and therefore all who are concerned with their operation, however high or low in function, should have a full and an anxious sense of responsibility.
>
> "In the present case there was nothing to extenuate Wile's negligence; there was nothing to confuse his judgment or cause hesitation. His duty was as clear as its performance was easy. He knew the danger of the situation and that it was imminent; to avert it he had only to descend from his train; run back a short distance, and give the signals that the rules directed."

Applying the reasoning in this decision to the facts in the case at bar, there was nothing to extenuate Conductor

Youngblood's negligence. He knew the requirements and directions of the written order in his possession, and he knew the rule which provided that the inferior train must take the siding at the meeting point, and after he was cleared by the semaphore all that he had to do to fulfill his meet order and avert the collision was to head in the east switch of the passing track, or back in at the west end, and await the arrival of Extra 723. Certainly, as was said in the *Wiles Case*, "his duty was as clear as its performance was easy." And in the instant case the tragedy of the collision was truly "appalling," for Conductor Youngblood and the engineer of his train, in failing to obey their meet order, brought death not only to themselves, but also to three members of the unoffending crew of the opposing train,—the conductor, engineer and fireman.

In the case of *Virginian Railway Co. v. Linkous*, 230 Fed. 88, reaffirmed on rehearing, 235 Fed. 49; certiorari thereto denied, 242 U. S. 630, the intestate was engineer of train 468 moving east, and was killed in a head-on collision with another train 33, moving west. He and his conductor had received a meet order for train 33 at a certain point. Three other employees, including the conductor, were riding in the cab of the engine, and all had notice of the meet order, copies of which were found upon their persons after the collision. Train 468, of which Linkous was engineer, ran by the meeting point without heeding the meet order, and collided with train 33 a short distance east of the meeting point. The plaintiff contended that the collision was not solely the result of the negligence of the engineer, but was "in part" due to the negigence of the other employees who were riding on the engine and had notice of the meet order. The Court denied the contention, holding that the engineer was directly responsible for the collision, and that the plaintiff could not come within the provisions of the Federal Employers'

Liability Act by relying upon the alleged negligence of the companions of the engineer.

In *Frese v. Chicago, B. & Q. R. Co.*, 263 U. S. 1, 3, the intestate was the engineer of a train which collided with another at a grade crossing of the two railroads. Both trains stopped in compliance with a State statute, but did not discover each other and pulled ahead and collided, killing Frese. Frese's view of the other track was obstructed intermittently until the crossing was reached, and his administratrix contended that she was entitled to recover under the Federal Employers' Liability Act upon the ground that there was evidence of negligence on the part of the fireman, who was sitting on the side toward the other approaching train, in not discovering the presence of the other train and warning the engineer; and that, even if Frese was negligent, such negligence would not completely bar a recovery. In denying a recovery on behalf of the engineer, this Court held that there was no evidence of negligence on the part of the fireman, and, if there had been, the result would have been the same, saying:

> "Moreover, the statute makes it the personal duty of the engineer positively to ascertain that the train can safely resume its course. Whatever may have been the practice, he could not escape this duty, and it would be a perversion of the Employers' Liability Act * * * to hold that he could recover for an injury primarily due to his failure to act as required, on the ground that possibly the injury might have been prevented if his subordinate had done more."

Manifestly the word "subordinate", used in this last sentence, is merely a term of identification. The meaning would have been no different if the word "fireman" had been used. If the conductor had been the engineer's companion, the rule would have been the same as in the *Linkous Case*, although not a subordinate.

A very exhaustive and clear opinion on the negligence of a railroad employee holding it to be his sole negligence where a collision occurred by reason of the violation of a train order, is that of *Davis v. Payne,* 108 Ore. 72, 216 Pac. 185, certiorari thereto denied, 263 U. S. 720. In that case it was alleged, as grounds for recovery, that the conductor and fireman of Davis' train also had copies of the order, the violation of which caused the collision, and that the conductor, when at Carvallis, negligently gave Davis instructions to proceed; that the conductor at any time could have stopped Davis by turning on the air in the caboose; that the order should have read "Cook to Oswego" instead of "Beaverton to Oswego"; and that the order should have been given to the plaintiff at Oswego instead of at Portland, the starting point. Also, that a "meet order" should have been given, requiring No. 231 to be held at Oswego until No. 234 arrived there. These, in substance, were the various allegations of negligence in the complaint. The action was tried under the Federal Employers' Liability Act.

The answer denied any negligence, and affirmatively alleged that the plaintiff's injury was caused solely by his own negligence in disregarding and refusing to obey the written order above referred to, which was: "No. 234, engine 2911, has right over No. 231, Beaverton to Oswego." The trial resulted in a verdict of $25,000.00, and judgment thereon, from which an appeal was taken to the Supreme Court of the State of Oregon. This judgment was reversed and a judgment ordered in favor of the defendant, the Court saying in its opinion:

> "The plaintiff was charged with the primary responsibility of moving the train, and it was his hand alone that moved the train from Oswego to the place of the wreck. In doing this he violated train order No. 226 and rules No. 83(b) and No. 906. He had no right to leave Oswego until he received a memorandum from the conductor, and it was his own act, and

his act alone, which produced the injury he complains of * * * He brought about the death of the engineer on train No. 234 who was rightfully proceeding from Cook to Oswego, and who was acting in strict conformity to train order No. 226. To hold that Congress intended by the Federal Employers' Liability Act, under the circumstances disclosed in this case, to penalize the carrier, and to reward the disobedient employee with a judgment against the carrier for $25,000.00, is unthinkable, and until such a construction is placed upon that Act by the Federal Courts, this Court ought not to uphold this judgment * * *

"Plaintiff having been notified that train No. 234 had a superior right over his train, between the stations of Oswego and Cook, it was his duty to remain at Oswego until the arrival of the superior train, and the carrier was under no obligation to repeat the order at Oswego, or to inform him when the superior train left Cook."

It was contended by the plaintiff in that case that the operator at Oswego was negligent in giving Davis a clear signal. (The respondent in the case at bar seems to rely upon the identical contention.) In answering that contention, the Oregon Supreme Court said:

"This contention has no merit. The dropping of the bar by the dispatcher could give him no right to proceed contrary to orders previously received. The only effect of this signal was to inform him that the dispatcher at Oswego had no order in his hands for the conductor and engineer of the train. The signal given by the operator did not supersede, or in any way change or modify the effect of, the order previously given * * * The order previously given could only be revoked by a subsequent order, and when the operator signaled that he had no order for train No. 231, plaintiff knew that the previous order had not been revoked, countermanded, or superseded."

Davis v. Kennedy, 266 U. S. 147, 148-149, was an action brought under the Federal Employers' Liability Act for the death of an engineer in a head-on collision. Kennedy was the engineer of train No. 4, going west from Nashville. He collided with train No. 1 coming east to Nashville. There were double tracks at Nashville uniting into a single track a little farther west. Under train schedules, No. 1 had the right of way, and the crew of No. 4, including Kennedy, had standing positive orders not to pass on to the single track unless they knew that No. 1 had finished its use and entered on the double track. These orders were disregarded by the crew of No. 4, and the collision resulted. The Supreme Court of Tennessee, affirming judgment for plaintiff, held that the other members of the crew, as well as Kennedy, were as much bound to look out for the approaching train as he was, and that their negligence was a contributing cause of the collision, notwithstanding the obligation of the engineer to obey the passing order. It seems clear enough that there was negligence in this respect by the other employees, and that, if they had done their duty, the collision would not have occurred; but this Court reversed the judgment of the Tennessee court, saying:

> "It was the personal duty of the engineer positively to ascertain whether the other train had passed. His duty was primary, as he had physical control of No. 4, and was managing its course. It seems to us a perversion of the statute to allow his representative to recover for an injury directly due to his failure to act as required on the ground that possibly it might have been prevented if those in secondary relation to the movement had done more."

In the case at bar, the intestate conductor was riding in the cab of the engine, and, under the rules of the railway company, he was jointly responsible with the engineer for the safe movement of the train and the observance of

the rules (Rules 105 and 1137, pages 155 and 162 of record), and they were jointly charged with the primary duty of fulfilling the meet order in their possession.

In the case of *Yadkin Railroad Co. v. Sigmon*, 267 U. S. 577, as appears from the decision of the Supreme Court of North Carolina (186 N. C. 519, 120 S. E. 56), the administratrix had recovered damages for the death of an engineer in a head-on collision occurring after his train had passed a station without observing a meet order. It was held by the state court that, although the decedent engineer was negligent in failing to obey the meet order, it was also the duty of the conductor and flagman, when they found the engineer had gone contrary to orders, to signal the train to stop. Both the conductor and the flagman apparently forgot the order, and did not so signal the engineer. Instead of thus reminding the engineer of his obligation, the flagman pulled the signal cord giving the engineer the signal to go ahead, and the conductor, although apparently observing him do so, did not interfere. The Supreme Court of North Carolina held that their negligence was a contributory cause of the death of the engineer, and that the jury was therefore empowered, under the Federal Employers' Liability Act, to apportion the recovery according to the ratio which they found should exist between the causal effect of the contributory negligence of the engineer and that of the defendant railroad company in the conduct of its conductor and flagman. This Court reversed this decision and remanded the cause for further proceedings, upon the authority of *Davis v. Kennedy*, and *Frese v. Chicago, B. & Q. R. Co., supra.*

In *McDonald v. Great Northern R. Co.*, (Minn.) 207 N. W. 194, the engineer, McDonald, was killed in a head-on collision. He and the conductor, McCabe, had both received a meet order. Before the train which they were to meet at a certain station had arrived, the engineer signaled the conductor that he was ready to proceed. The conductor signaled him ahead. Both had forgotten their

orders. The plaintiff sought to come within the protection of the Federal Employers' Liability Act by reliance upon the negligence of the conductor in signaling the engineer ahead, as contributory "in part" to the disaster. The plaintiff had a verdict in the trial court, and, upon appeal, the Supreme Court of Minnesota reversed the judgment of the trial court, saying:

> "Both the engineer and conductor had a duty, personal to himself, to see to it that order 56 was not violated. Its violation by McDonald, in the absence of some other intervening and efficient cause, was negligence which continued to the place of collision, and was the producing cause of the accident. The fact that McCabe was also guilty of negligence in his silent permission in allowing the engineer, who was the primary wrongdoer, to violate the order, will not permit plaintiff to recover upon the theory that McCabe's negligence was a contributing cause. To so hold would permit the anomaly of an employee violating orders proximately resulting in his own injury to recover *upon the theory that if some other employee had done his duty and prevented the violation the injury would not have occurred.*" (Italics added.)

A case in which the concurring negligence relied on was not that of an associate or subordinate of the plaintiff, but of an employee in another department, is *Southern Railway Co. v. Hylton,* 37 F. (2d) 843, certiorari denied, 281 U. S. 745, wherein the Circuit Court of Appeals of the Sixth Circuit held that the engineer's disobedience of the train dispatcher's order to look out for a steel gang laying rails was the sole efficient cause of the derailment resulting in his death, notwithstanding the negligence of the track gang foreman in failing to send out a warning flag far enough up the track to enable the train under fair control to stop, as required by a rule or by custom.

In a well considered opinion by Circuit Judge Wilbur in the case of *Bradley v. Northwestern Pac. R. Co.,* 44 F.

(2d) 683 (C. C. A., 9th Ct.), the Federal decisions were reviewed and a recovery denied for the death of an engineer who failed to obey an order to meet an extra freight at a certain point, notwithstanding the conductor failed to give warning by whistle as required by the rules of the railroad company.

In the case of *Paster v. Pennsylvania R. Co.*, 43 F. (2d) 908, the Circuit Court of Appeals for the Second Circuit reversed a judgment in favor of a car repairer who was injured while violating the rule requiring him to place blue flags. It held, under authority of the recent decisions of this Court, that the disregard by the servant of specific orders or standing rules, promulgated for his own safety, will bar his recovery although the injury was due also to the fault of other servants.

In our present case it will be recalled that there is no allegation or contention of employer negligence based on negligence attributed to the engineer of intestate's train, or to any other member of its crew, or to any member of the crew of the train collided with.

There is no logical escape from the conclusion that the decedent conductor's death was directly and proximately due to the running of his train beyond Orangeburg, the meeting point, in violation of train order No. 18 which he received at Branchville, and that there was no negligence on the part of the crew of the other train in the collision. It seems to us clear that it would be a perversion of the statute to allow his representative to recover upon the theory that if other employees had done their full duty they might possibly have prevented Youngblood from violating his train order. The order in Conductor Youngblood's possession, and under which he had run his train from Branchville to Orangeburg, contained all the information that he would have had from getting a copy of the order at Orangeburg, and from a further direction from the operator there to take the side-track—

directions purely cumulative—disclosing nothing more than he already knew, and in no way changing or superseding his order. The operator at Orangeburg cleared Conductor Youngblood by the semaphore to do what he was authorized and required to do under the terms of his train order, and when he passed this semaphore and failed to have his engine go in the east end of the passing track, declined the fireman's suggestion to back in at the west end, but proceeded on the main line through the station yard and beyond, he set in motion the instrument of death, and from that moment to the time of the collision resulting in his death there was no intervening negligent act on the part of any of the "officers, agents, or employees" of the petitioners that contributed in any degree to the accident. The negligence of the intestate conductor continued from the inception of his violation of his meet order up to the moment of the fatal collision, and was unbroken and uninfluenced by any act or neglect of petitioners.

Whether Youngblood's disregard of his train order was intentional or attributable to mental aberration, and whether such reminder and additional motive would have prevented him from violating his order, can only be surmised and at best are matters of guesswork. The inescapable fact remains that he himself did violate the plain terms of his positive meet order, and received his fatal injuries as the direct result of that violation.

POINT II.

THE ENTIRE EVIDENCE HEREIN SHOWS THAT THE INTESTATE VOLUNTARILY EXPOSED HIMSELF TO RISKS AND DANGERS SO OPEN AND OBVIOUS THAT NO ORDINARILY PRUDENT MAN WOULD HAVE CONTINUED TO FACE THEM, AND HE ASSUMED THE RISK OF HIS DEATH.

There is no charge made in this case that petitioners violated any Act of Congress enacted for the safety of employees (45 U. S. C. 54). Hence the defense of assumption of risk remains in full force as at common law.

Missouri P. R. Co. v. David, No. 365, October Term, 1931, decided Feb. 15, 1932;
Toledo, St. L. & W. R. Co. v. Allen, 276 U. S. 165;
Atlantic C. L. R. Co. v. Southwell, 275 U. S. 64;
St. L.-S. F. R. Co. v. Mills, 271 U. S. 344;
Chesapeake & Ohio R. Co. v. Nixon, 271 U. S. 218;
Boldt v. Pennsylvania R. Co., 245 U. S. 441;
Seaboard A. L. Ry. v. Horton, 233 U. S. 492.

As applied to actions under the Federal Employers' Liability Act, it is held that the employee assumes all the ordinary risks and hazards of his occupation, whether appreciated by him or not, and likewise assumes extraordinary risks and hazards known to and appreciated by him, even though caused by the master's negligence.

Chi., R. I. & P. Ry. Co. v. Ward, 252 U. S. 18.

We appreciate that a distinction has always been drawn in general between assumption of risk and contributory negligence under the statute.

Pryor v. Williams, 254 U. S. 43;
Chesapeake & O. R. Co. v. De Atley, 241 U. S. 310;
Seaboard A. L. R. Co. v. Horton, 233 U. S. 492.

This Court stated the distinction thus in the *Horton Case, supra:*

> "The distinction, although simple, is sometimes overlooked. Contributory negligence involves the notion of some fault or breach of duty on the part of the employee, and since it is ordinarily his duty to take some precaution for his own safety when engaged in a hazardous occupation, contributory negligence is sometimes defined as a failure to use such care for his safety as ordinarily prudent employees in similar circumstances would use. On the other hand, the assumption of risk, even though the risk be obvious, may be free from any suggestion of fault or negligence on the part of the employees."

However, this Court did not say that assumption of obvious risks *must* be free from the suggestion of fault or negligence on the part of the employee, or that the defense of assumption of risk cannot exist if negligence of the employee contributed to the risk.

If that were the necessary implication of the distinction it would put a premium on the negligence of the employee, since an employee would be barred of recovery as having assumed even unusual and extraordinary risks if known to him, provided no negligence of his own helped create the risks; but, if the very same kind of risks were contributed to by his own positive negligence, he would not be barred but would be entitled to a comparison of negligences.

We submit that the distinction becomes tenuous to the point of substantial non-existence when the risks and hazards of the work immediately engaged in, whether caused by the negligence of the master alone, or by that of the employee alone, or by the concurrence of both, are not only fully known to and appreciated by the employee but also so open and obvious that no man of ordinary prudence would continue in the face of the danger.

We believe the Court of Appeals of Kentucky suggested the proper solution of the apparent paradox, in *Chesapeake & O. R. Co. v. De Atley,* 159 Ky. 687, 167 S. W.

933, 935, reversed on other grounds, 241 U. S. 310, when it said:

> "Notwithstanding this distinction, it is generally held that assumption of risk and contributory negligence frequently approximate where the danger is so obvious and imminent that no ordinarily prudent man would assume the risk of injury therefrom. Narramore v. Cleveland, etc., R. Co., 96 Fed. 298."

We submit that the risks and dangers of running an inferior train, on a single track railroad, in a dense fog which obscured visibility, in the direction of a superior train known to be approaching from the opposite direction and known not to expect the inferior train to be where it was, and in clear violation of a positive meet order, were so open and obvious that no man of ordinary prudence would have engaged in such a hazardous enterprise. If Youngblood could conceivably have been engaged in such an undertaking with full knowledge of the risks, but without fault of his own, it seems clear under the decisions that he would have assumed the risks and that his administratrix would have been barred of recovery.

We do not believe the statute intended that the administratrix should be in better position to recover merely because her intestate's negligent and reckless conduct in disobeying a written meet order produced the very situation of open and obvious danger and peril in which he found himself.

We submit that the judgment below should be reversed on the ground that respondent's intestate assumed the risk of his death, as well as on the ground that the sole proximate cause of his death was his own negligence.

POINT III.

THE SUPREME COURT OF SOUTH CAROLINA MISINTERPRETED THE FEDERAL EMPLOYERS' LIABILITY ACT IN UPHOLDING A RECOVERY OF SUBSTANTIAL DAMAGES IN THE ABSENCE OF PROOF OF WHAT PECUNIARY ASSISTANCE OR SUPPORT THE NAMED BENEFICIARIES MIGHT REASONABLY HAVE EXPECTED TO RECEIVE FROM THE DECEASED EMPLOYEE HAD HE LIVED.

It is the contention of petitioners that, in any view of this case, there was not sufficient evidence on which the jury could base an award of damages, and hence that the State Supreme Court erred in sustaining the trial court's refusal to grant petitioners' motion for a directed verdict on this ground.

In an action under the Federal Employers' Liability Act for death, the damages can only be compensatory, and the measure of them is what the beneficiaries named in the statute necessarily lose by the death of the deceased employee. Unless the plaintiff shows that the qualified beneficiaries have been deprived of a reasonable expectation of pecuniary benefits by the wrongful death of the injured employee, there can be no recovery.

In the case of *Michigan Central R. Co. v. Vreeland*, 227 U. S. 59, 70, it was held that only the pecuniary loss or damage is allowable, and that loss is not dependent upon any legal liability of the injured person to the beneficiaries. That may be one, but it is not the sole, test. "There must, however, appear some reasonable expectation of pecuniary assistance or support of which they have been deprived."

In *Gulf, C. & S. F. Ry. Co. v. McGinnis*, 228 U. S. 173, 175, this Court, in overruling the decision of the Texas Court of Civil Appeals, said:

"The Court of Civil Appeals upheld this ruling, saying that the Federal 'statute expressly authorized the suit to be brought by the personal representative for the benefit of the surviving wife and children of the deceased, irrespective of whether they were dependent upon him, or had the right to expect any pecuniary assistance from him.' 147 S. W. 1189. This construction of the character of the statutory liability imposed by the Act of Congress was erroneous. In a series of cases lately decided by this Court, the Act in this aspect has been construed as intended only to compensate the surviving relatives of such a deceased employee for the *actual pecuniary loss* resulting to the particular person for whose benefit an action is given. The recovery must therefore be limited to compensating those relatives for whose benefit the administrator sues *as are shown* to have sustained some pecuniary loss." (Italics added.)

In the case at bar the respondent merely testified as to the amount her intestate was earning at the time of his death, and that she and her children were dependent upon him for support. There was no testimony as to the deceased's or his widow's expectancy of life, not even the mortuary tables being introduced in evidence.

The respondent's entire testimony in this regard was as follows (R. 9):

"Mr. Youngblood was thirty-nine years old when he died and we had been married sixteen years. At the time of his death he was employed by Southern Railroad as Conductor and had been working for them sometime. His compensation was about twenty-three or twenty-four hundred dollars the year before his death. I am administratrix of his estate. We had six children, all of whom are now living. Grace was fourteen years old, Claude, eleven years, Cleveland, nine years, Carl, six years, Sarah, four years, and James was ten months. Mr. Youngblood supported myself and the children. My age is forty years."

And the following (R. 9):

> "Mr. Youngblood was very tall, over six feet, and weighed about two hundred and twenty-five pounds. He had been working for the Southern Railway for about twenty years, I think. He had worked for them since we were married, and before we were married, and had risen to the position of Conductor. His health was good * * * The six children and myself depended on Mr. Youngblood for support."

The damages, if any, recoverable in this action are necessarily based entirely upon the deprivation of future pecuniary benefits which the respondent and her children might have reasonably received from the intestate had he lived, and it seems to us that the life expectancy of the intestate and of the respondent was an indispensable factor in computing the amount of such reasonably expected pecuniary benefits. There was an utter absence of proof as to the amount the decedent conductor contributed out of his wages to the support of his family, or as to what pecuniary assistance they might reasonably have expected to receive from a continuation of his life, and no facts from which the jury could estimate the monetary loss to the beneficiaries by reason of the death. The necessary elements of the calculation were missing.

In the case of *Nashville, C. & St. L. R. Co. v. Anderson,* 134 Tenn. 666, 185 S. W. 677, an action under the Federal Employers' Liability Act, the deceased employee left a widow and infant child. We quote from the opinion of the Tennessee Supreme Court as follows:

> "The pecuniary loss of these beneficiaries was not what the deceased might have earned, but what part of his earnings they might reasonably have expected to receive.
>
> "Further, it seems very clear from a study of the

decisions of the Supreme Court of the United States * * * that there must be evidence of pecuniary damage before such damage can be allowed. This rule is enforced with more strictness by the Supreme Court of the United States, perhaps, than by some of the State courts in jurisdictions where acts fashioned after Lord Campbell's Act prevail.

"In this case deceased's age, expectancy, and earning capacity were proven. *It was also proven that his wife and child were dependent upon him for support. There was no proof, however, as to the value of his customary contributions to the support of these beneficiaries, and nothing to indicate what such beneficiaries might reasonably have expected from him in the way of support.*

"In this case it was only shown that the beneficiaries of this suit had sustained a loss. *There was no proof as to the extent of the loss. There was proof of the earning capacity of the deceased and his expectancy, but there was nothing to show what these beneficiaries might reasonably have expected to receive from the deceased, and under such circumstances, under the rules laid down in the late Supreme Court cases, no recovery for more than nominal damages could stand.*

"The elements of damage to be considered by the jury are indicated in the foregoing authorities. *There must be proof to show the reasonable expectation. Under the reasoning of the Supreme Court decisions, the widow's expectancy of life should be taken into account in estimating her loss.*" (Italics added.)

CONCLUSION.

For the reasons assigned in the petition for certiorari, and because of the facts and the law set out in this brief accompanying said petition, we respectfully submit that the writ of certiorari should be granted, and that, after full consideration by this Court, the judgment and decision of the Supreme Court of South Carolina herein

should be reversed and judgment be entered in the cause for your petitioners.

Respectfully submitted,

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S. R. PRINCE,
Of Counsel.

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Supreme Court of the United States

OCTOBER TERM, 1931

Nos. 788 and 787

SOUTHERN RAILWAY COMPANY, AND SOUTHERN RAILWAY, Carolina Division, *Petitioners,*

versus

MARY O. YOUNGBLOOD, AS ADMINISTRATRIX OF THE ESTATE OF CLEVELAND J. YOUNGBLOOD, *Deceased.*

AND

SOUTHERN RAILWAY COMPANY, AND SOUTHERN RAILWAY, Carolina Division, *Petitioners.*

versus

MARY ELIZABETH DANTZLER, AS ADMINISTRATRIX OF THE ESTATE OF LAWRENCE KEITT DANTZLER, *Deceased.*

BRIEF FOR THE RESPONDENTS.

WILLIAM C. WOLFE,
Attorney.
EDGAR A. BROWN,
R. C. HOLMAN,
JULIEN J. BUSH,
JULIAN S. WOLFE,
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JULIAN S. WOLFE,
Of Counsel.

STATEMENT OF THE CASE.

Two cases involving the same facts,—argued together.

Time: January third 1924, about 9 a. m.

Place: Just West of Orangeburg, S. C., on the Charleston-Columbia line of Southern Railway.

Head-on collision in which Conductor Youngblood and Engineman Dantzler of one train, and the conductor, engineman and fireman of the other train were killed.

These actions under Federal Employer's Liability Act to recover damages for wrongful deaths of Dantzler and Youngblood.

Verdicts, affirmed by State Supreme Court, in each case for $12,500.00.

There is but one practical question involved, namely, were such alleged wrongful deaths due to the actionable negligence of the railroad?

The statement of facts contained in the petitioner's brief and petition are not complete and are argumentative; hence we crave reference to the Transcript of Record for a full, complete and correct statement of the facts and circumstances involved in the case.

SUMMARY OF ARGUMENT.

We contend that the Transcript of Record contains abundant evidence, direct and circumstantial, showing that the wrongful deaths of the intestate employes were due to the actionable negligence of the railroad.

We further contend that if such deaths were not occasioned by the sole negligence of the railroad, then at least by its contributory negligence.

We also submit that the verdict and judgment entered thereon are supported by ample testimony of actionable negli-

gence; and that the amount of the verdicts is reasonable and temperate.

We further submit that the Caldine case, so strongly relied upon by Petitioners, is inapplicable and is to be clearly differentiated from the cases now before the Court.

We earnestly contend that under the evidence in the Record measured by the applicable rules of law we are entitled to have the petitions for writs of certiorari denied.

ARGUMENT.

An extra freight train became disabled at Ft. Motte on the Charleston-Columbia division of the Southern Railway.

There was another extra freight train number 783 moving in the opposite direction, and then East of Ft. Motte.

During the night Conductor Youngblood and Engineman Dantzler had been operating a switch engine in the Branchville yards about midway between Charleston and Columbia. They had completed their work about 5 a. m., and had retired. About 8 a. m. they were aroused and directed to proceed with their switch engine to Ft. Motte to pull the disabled freight train thence westward to Columbia.

The train order given them read:

"Extra 723 east gets this order and meet extra 483 west at Orangeburg. Engine 483 run extra from Branchville to Andrews."

This order was numbered 18; was sent from the dispatcher's office in Charleston, S. C., at 8:01 a. m.; and was addressed to the operators at Branchville and Orangeburg.

A copy was given Dantzler and Youngblood at Branchville before starting.

Being addressed to the "operator" at Orangeburg he should have made five copies, keeping one for his office files, and delivering two to Dantzler and Youngblood on arrival,

and the other two to the conductor and engineman of extra 723 when they arrived (R. pp. 13, 14, 15,—references are to Youngblood Transcript).

But the operator Jones at Orangeburg negligently failed to make five copies, making only three (R. ff. 66-67, pp. 60-1).

When operator Tison succeeded operator Jones at Orangeburg at 8:00 a. m. Jones gave him only three copies (R. ff. 68-9, pp. 62-3).

The two copies for Youngblood and Dantzler which they ought to have gotten when they reached Orangbeurg, but did not get, are known as middle orders and are sent to the meeting point designated to members of both crews as required by the Rules as a matter of precaution and safety (R. p. 12).

Between Branchville and Ft. Motte on that morning there were five trains: the disabled train at Ft. Motte, extra 723, the local freight standing on the track at Orangeburg, passenger number 12 at Orangeburg, and extra 483.

The weather was phenomenally foggy, of which the dispatchers in Charleston had been warned by the operator at Rowesville which is between Branchville and Orangeburg (R. f. 9; and p. 43).

As 483 (Youngblood and Dantzler) approached the station at Orangeburg the required whistle signals were given; operator Tison on duty there and seeing the approach of extra 483 and having no orders as required by the rules for its crew called Dispatcher Rogers in Charleston and told him that extra 483 was approaching and wanted to know what to do with "her" (R. f. 48; pp. 43-44; and also ff. 72-73; pp. 66-67).

It is so highly important that we quote the testimony of Dispatcher Rogers and operator Tison on this point:

Examination of witness Rogers:

"Q. Now, after 483 had executed the movement at the packinghouse track, what was the next thing you heard in reference to this train movement?

A. I asked the operator at Orangeburg if extra 483 was coming, * * * *.

Q. What did he say?

A. That it was coming.

Q. What did you tell him?

A. To clear him and go to west end of the passing track and wait for number 723. (R. pp. 43-44)."

Examining Mr. Tison, the operator:

"Q. When you saw 483 coming what did you do?

A. I told the dispatcher he was coming.

Q. What did the dispatcher tell you?

A. To clear him and let him go to the east end of pass track.

Q. He didn't tell you to tell him anything?

A. No, sir." (R. p. 64).

Now it is to be remembered that trains are moved on this line by orders from the dispatcher in Charleston (R. pp. 12-65).

Also by semaphore signals operated at the stations and by clearance cards to be given by the operators.

Thus it is seen that the train crew have nothing to do with the movement of the train except to obey orders, signals and clearance card directions. The crew has no right to question such orders, signals, or directions. They have a right to assume that such orders and signals are safe, correct and proper, and must act on same unless the danger is immediate and obvious. If they saw a train meeting them which would collide "head-on" then they must stop and refuse to obey orders or signals which would send them into collision.

In the cases at bar the crew had a right to assume that the signals given by the operator were safe and correct, being semaphore signals (red board dropped) which indicated "proceed" and "clear track" ahead (R. p. 171).

There was a telegraph station between Orangeburg and Ft. Motte, their destination, namely, St. Matthews; and they had a right to assume when they were not given two copies of the meet or middle or safety order at Orangeburg, but on the contrary were given a semaphore signal to proceed as the track was clear, that other arrangements had been made by proper orders to have extra 723 (train moving in opposite direction) meet and pass at St. Matthews or some other local pass track, or that 723 had been delayed or held at St. Matthews or at some local pass track.

It could not be said that the crew of 423 was solely negligent, because they obeyed signals given by the operator.

Even if the crew was guilty of contributory negligence this could not under the Act bar recovery.

Nor can it be successfully contended, we think, that the operator at Orangeburg was free from fault and negligence in performing his duties.

The proper movement of extra train 483 would have been as follows: When the train approached the station at Orangeburg the whistle should be sounded four times,—this was done; if the operator had orders, which he ought to have had, but did not have in this case, the semaphore board should have been held at stop, and the operator when the train stopped ought to have delivered the order number 18 to the conductor and engineman of 483, which he did not and could not do as he had none, and in addition thereto *he should have held the board on stop* and *given the train crew a clearance card according to the rules* together which any verbal instructions from the dispatcher, who had supreme control over the movement of the train, but instead of this he dropped the board and let the train go by without giving the crew a clearance card, which was in violation of the rules,—these statements are in accord with the testimony of the two dispatchers and operator Tison (R. pp. 20, 35, 36, 49, 50, 51, 52, 59, 60, 73, 79, 80, 81).

Operator Tison admits that he dropped the red board from

stop to proceed, and did not give Youngblood and Dantzler a clearance card or any orders or the verbal instructions given by the dispatcher (R. pp. 79, 80). Mr. Tison says that instead of giving him a clearance card he gave him order to proceed,—to use his own language: "I gave him the board to proceed" (R. p. 80).

When the board is dropped from stop this is an order to proceed according to original order to where they were going, namely, to Ft. Motte to pull the disabled train thence to Andrews.

The clearance card is described by dispatcher Rogers (R. p. 60); and the form appears at page 150 of the Record.

When the board is dropped from red which means to white it means proceed; to use the language of Dispatcher Pearce, when the board is dropped from red to white *it means proceed*, that *the track is clear*, and *is a clear signal* (R. p. 36).

The semaphore is shown at page 171 of Record, and it will be noted that by this picture when the board is dropped it means: "Indication—proceed." "Name—Clear signal."

It was the right and duty of Dantzler and Youngblood to proceed when no orders, or clearance card, were given, and the board dropped from red to white (R. pp. 66 to 75).

It is clear that operator Jones violated his duty in failing to make five copies of the train order so that the crew of extra 483 would receive two copies on arrival.

It is also clear that operator Tison violated his duties or failed to perform his duties on the arrival of extra 483 at Orangeburg.

What were the duties of operator Tison in regard to the movement of extra 483 at Orangeburg just preceding the collision? We will let the dispatchers and operators answer in their own language:

Dispatcher (now Chief Dispatcher) Rogers testified:

"Q. Relative to the clearance which you authorized

operator Tison to give to the crew of 483 at Orangeburg, —what should Mr. Tison have done?

A. He should have given the crew a copy of the order, which we term a middle order, and copy 603 (clearance card) and a clearance card and understanding."

* * * * * * * * * * *

Q. In other words, Mr. Tison should have held the red board on him and caused him to stop, and then delivered to him two copies of the message?

A. Of the train order, yes sir.

* * * * * * * * * * *

Q. When you told the operator at Orangeburg (Tison) to clear him to the west end of the track, you expected that he would stop him and communicate with him?

A. Absolutely, yes, sir. That was the only way that he could get all of the information.

Q. This particular order supposing it was not addressed to the operator, was it the operator's duty to hold that order (train) there and hold the board on the train and stop it?

A. Yes, sir.

Q. When the board is red a clearance card should have been used?

A. Yes, sir". (R. pp. 52, 53).

Mr. Bellinger, another dispatcher for Southern Railway, testifying as an expert said:

"Q. * * * those two men on egine 483 were entitled to two copies of that order?

A. It was not there for them.

Q. They were entitled to it?

A. I agree with you that it should have been there.

Q. And they should have gotten it?

A. Yes, sir.

Q. And a clearance card too?

A. Yes, sir." (R. p. 132).

The undisputed testimony is that the operator did not have

or give them copies of the middle order; did not hold the red board on them, but dropped it to proceed; did not give them a clearance card as he ought to have done and as required by the rules, and could not and did not give them the verbal instructions of the dispatcher.

The crew of 483 when the red board was dropped and they were given the signal of clear track—proceed, and not given a clearance card we submit that they had a right to assume that the meet order had been changed and that they were entitled to proceed at least to the next telegraph station.

Extra trains are moved exclusively by train orders and signals, and the crew of 483 were duty bound to obey the signals given by the operator.

These cases are of a most unusual nature, and no other case involves similar facts and circumstances.

We submit that each of the cases arising under the Federal Employer's Liability Act on the question of actionable negligence should be considered and decided upon its individual facts and circumstances.

There were a number of unusual circumstances surrounding the movement of the extra 483 about the point of collision; there were five trains moving on a single track railroad within a very short distance; three of the trains were extras; a phenomenal fog prevailed at the time; and the trainmaster of the division happened to be there in the street crossing next to the station close to the semaphore and when the whistle was sounded he "highballed" them on and forward (R. pp. 110-111).

Several errors in train orders and signalling were admittedly made: The original train order was copied as three not five copies, providing no copy orders for crew of 483; operator Tison dropped the red board thus signalling, clear track — proceed, and did not stop them as was his duty; operator Tison failed to give the crew copies of the meet order as required by the Rules; and he also failed, worst of all, *to stop them* and *give them a clearance card* and the *instructions* ordered

to be given by dispatcher Rogers.

We submit that this constituted negligence and was a proximate cause of the deaths of the intestate employees.

If operator Tison had promptly performed his duties it is highly probable that the catastrophe would not have happened.

If such conduct and such failure to perform duty was not the sole cause of the wrongful deaths of the employees, then at least, as held by the South Carolina Supreme Court, it constituted contributory negligence on the part of the railroad, and brought the case well within the meaning of the Act, which gives a cause of action if the injury is due in whole or *in part* to the negligence of the railroad.

Accordingly we contend that the cases were properly submitted to the jury because there was evidence of actionable negligence which in whole or at least in part caused the deaths of the intestate employes.

The contention of the Petitioners that there could be no recovery because the employees had assumed the risk of such danger as caused their deaths is, we submit, without merit.

The decisions of this Court upon the question of assumption of risk in such cases are so clear and so plain that we will not undertake to state the rules of law deducible therefrom, but content ourselves by saying that when the operator at Orangeburg, Mr. Tison, negligently dropped the red board, giving the clear track-proceed signal, not stopping the train, and in failing to give the crew a clearance card, thus inducing, even ordering them to proceed to their destination, or at least to the next telegraph station, it could not be said that the crew had knowledge of any danger or extraordinary risk of danger, and knowledge, actual or imputed, is the foundation of the doctrine of assumption of risk.

Nor is there any merit in the contention that there is no evidence of financial loss to the beneficiaries.

It is to be remembered that both circumstantial as well as direct evidence is acceptable to prove an allegation.

The Record shows the age of the intestate employees as well as of the beneficiaries.

Also that the beneficiaries were dependent upon their intestate husbands and parents (R. p. 9 and 10).

The wages of the intestate employees was also proven in each case (R. p. 9).

We submit that it was not obligatory to offer in evidence any mortality tables,—it was for the jury to say what expectancy men of this age probably had; and how much would probably have been contributed to support of the beneficiaries who were dependent upon them.

We submit that none of the cases decided by this Court involving the question of actionable negligence under the Federal Employer's Liability Act are similar to the cases at bar in respect to surrounding facts and circumstances.

The case of Caldine, so strongly relied upon by counsel for petitioners, we submit is clearly different and can be clearly differentiated from the cases at bar.

The facts in the Caldine case (278 U. S. 139; 73 L. Ed. 224) briefly summarized are:

Caldine, a conductor, had a permanent written order requiring his train to meet and pass another train moving in the opposite direction at a stated place; the order further provided that it was to be permanent unless countermanded in writing; on the tragic day Caldine, the conductor, despite the order, which had not been countermanded as required, directed his train to go on, resulting in a head-on collision in which he lost his life. The Court properly held that there could be no recovery.

The syllabus in this case reads as follows:

"No recovery can be had under the Federal Employer's Liability Act for the death of a conductor who

orders his train to proceed when reaching a point where his written orders require him to pass a train from the opposite direction, which has not arrived, merely because other employees failed to notify him of a telephone communication from the conductor of the other train, that he has left the next available passing point."

In the Caldine case the conductors undertook to direct the movement of the train, resulting in the collision; whereas, train movements are under the direction of the dispatchers and operators.

In the cases at bar the conductor and engineman undertook to move the train in accordance with the orders and signals given by the dispatchers and operator at Orangeburg. Trains are properly moved by orders and signals given by the dispatchers and operators. If erroneous orders or signals are given or omitted by the dispatchers or operators, as in the instant cases, this constitutes negligence.

If the conductors, who had no right to direct the movement of the trains, this being entirely within the authority of the dispatchers and operators, and injury or death ensues, then, as in the Caldine case, they must be held to be the authors of their own wrongs.

We submit that the petitions for the writs ought to be denied.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 788.—October Term, 1931.

Southern Railway Company, et al., Petitioners, *vs.* Mary O. Youngblood, Administratrix. } On Writ of Certiorari to the Supreme Court of South Carolina.

[May 16, 1932.]

Mr. Justice Roberts delivered the opinion of the Court.

Respondent brought this action under the Federal Employers' Liability Act to recover for the death of her intestate, a conductor in petitioners' employ, who was killed in a head-on collision while riding on the engine of an extra train. Petitioners operate a single track railroad between Charleston and Columbia, South Carolina, through Branchville, Orangeburg, St. Matthews, and Fort Motte. Trains running from Columbia to Charleston are designated eastbound, and those from Charleston to Columbia westbound. On the morning of the accident the engine of a westbound freight train became disabled at Fort Motte, a station nineteen miles west of Orangeburg. A yard engine kept at Branchville, eighteen miles east of Orangeburg, was ordered to go to its relief. This locomotive, running light, was designated as Extra 483 West, and had a crew consisting of respondent's intestate as conductor, an engineer, and a fireman. A freight train known as Extra 723 East was moving eastwardly from Columbia to Charleston, and it was necessary for the two to meet and pass somewhere on the line. The train dispatcher at Charleston sent a telegraphic order to Branchville, the place of departure of Extra 483, and to Orangeburg, the selected passing point, as follows:

"Extra 723 East get this order and meet Extra 483 West at Orangeburg. Engine 483 run extra Branchville to Andrews."

Such an order is known as a form 31, which has to be signed for by the conductor when delivered to him. The order was transmitted and received by the operators at Branchville and Orange-

burg as a "three copy" order and the operator at Branchville accordingly made three copies, one for his file and two which he delivered to respondent's intestate, who signed for the same and delivered one to the engineer. They read it in the presence of the fireman before leaving Branchville. There was nothing on the face of the order to indicate that No. 483 would be given additional copies of it, or would receive any other order, at Orangeburg, the designated passing point. The Charleston dispatcher intended that this order as transmitted to Orangeburg, and addressed at that point to "Extra 723 East and operator," should be what is known as a "five-copy" order—that is, that the operator at Orangeburg should make five copies, one for his file and two to be delivered to the conductor of each of the trains which were to pass at that point. Through some oversight the Orangeburg operator received the message as a three-copy order, one of which would be retained for his file and the other two given to the conductor of Extra 723 East. Thus there were no copies for delivery, as intended, to respondent's intestate, the conductor of Extra 483 West, as there would have been had the order been received and understood at Orangeburg as a five-copy one.

Under the rules of the company the eastbound train, 723, was the superior, and it was the duty of 483 to take the siding at Orangeburg and permit the other to pass on the main track. At that point the semaphore signal was located in front of the operator's office about seventy-five yards east of the east switch of the pass track, so that the westbound 483 approaching Orangeburg would necessarily have to pass this semaphore to reach the entrance of the pass track, which is about three-fourths of a mile long. As 483 was approaching the semaphore the Charleston dispatcher called the Orangeburg operator and inquired as to its whereabouts. The operator replied that it was then approaching. The dispatcher told the operator to "tell him to go to the west end of the pass track and wait on Extra 723." Engine 483 stopped just east of the semaphore and blew four blasts, a signal inquiring whether the operator has any orders for the train. In response the latter dropped the semaphore, which is an indication to the crew that there are no further orders and that they are to proceed under those they then have. The intended verbal instructions were not given. After leaving Branchville the crew of No. 483, having

received no further or other orders with respect to passing Extra 723, were under a duty to follow the written orders received at Branchville, which involved passing the semaphore at Orangeburg and going on the pass track to clear the main line for No. 723. Instead the train went up the main line, failing to enter the pass track at either the east or the west switch. As it approached the west switch a yard locomotive blew a warning blast and the engine stopped momentarily. The fireman then inquired of the conductor and engineer whether they were not going to go in on the pass track, to which the conductor replied that they had time to reach the switch at Stilton, some two miles beyond. They proceeded on the main track beyond Stilton, evidently missing the switch there because of a heavy fog. The engine collided head-on with Extra 723, killing respondent's intestate and the engineer, and three of the crew of 723.

There was no allegation of negligence on the part of the engineer of 483 or any member of the crew of Extra 723, the sole claims being with respect to the failure of the operator at Orangeburg to make a five-copy passing order and deliver two copies of it to the respondent's intestate, and the failure of the same operator to give the verbal instructions to respondent's intestate to run to the west end of the pass track and wait for 723. A request by petitioners for a binding instruction, on the ground that there was no evidence of negligence on the part of petitioners or their employees which in whole or in part caused the accident, was refused. The trial court submitted the case to the jury and a resulting verdict and judgment in favor of respondent was affirmed by the state supreme court.

Beyond peradventure respondent's intestate disobeyed a definite order which was not revoked or superseded by any other orders, verbal or written. By force of this order and the rules of the company No. 483 was bound to pass the semaphore at Orangeburg, run onto the pass track, and not leave until 723 had passed on the main track. Copies were found on the persons of both the conductor and engineer after the collision. This crass disobedience of operating orders was the sole cause of the intestate's death. If the order respecting the passing of the trains had been made as a five-copy order the operator at Orangeburg would merely have handed the crew two copies in the same words as those of the

order they then held, which then governed their conduct. If the operator at Orangeburg had verbally confirmed the order that 48 was to run to the west end of the pass track and wait there for 72 this verbal instruction would not in any wise have altered the du of respondent's intestate under his existing written orders.

The suggestion is made that the dispatcher was negligent in n communicating the passing order to the crew of Extra 723 some point west of Orangeburg, so that they would have kno they were to pass Extra 483 at Orangeburg. But such a pr cedure would not have altered the running of Extra 723 in a particular. It would still have had the right of way over 483 and through Orangeburg, and the accident occurred over thr miles west of that point.

The case comes to this: that respondent's intestate had cle and definite orders which if obeyed would have avoided t accident and the disobedience whereof was the sole efficient cau of his death. As said in *Unadilla Valley Railway Company Caldine,* 278 U. S. 139, 142:

"A failure to stop a man from doing what he knows that h ought not to do, hardly can be called a cause of his act. Caldi had a plain duty and he knew it. The message would only ha given him another motive for obeying the rule that he was boun to obey."

The record is destitute of any evidence of negligence on the pa of the petitioners or their servants or agents which was in an degree a cause of the death of respondent's intestate, and the was nothing to submit to the jury.

The judgment must be reversed and the cause remanded fo further proceedings not inconsistent with this opinion.

So ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.